UNITED STATES SUPREME COURT,
WASHINGTON, D. C.

October Term 1943.

NICHOLAS J. CURTIS,
Petitioner,

vs.

UTAH FUEL COMPANY, et als.,
Respondents.

BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

THE BRIEF TO THE C. C. A. 3RD D. C. IS MADE A PART HEREOF BY REFERENCE. THE REASONS ARE THE FINANCIAL ABILITY OF THE PETITIONER TO MEET AND COPE WITH THE ELEMENTS OF THE CRIMINAL CONSPIRACY ALLEGED IN THE COMPLAINT AND EXHIBITS.

"PETITIONER'S BRIEF".

MAY IT PLEASE THE HONORABLE COURT:

POINTS TO THE QUESTIONS INVOLVED.

Point 1 to Q. 1st. The requirements of the provisions of Fed. Rule 84, form No. 2 of the Federal Rules of Civil Procedure have been strictly complied with. The best argument is to be found on page 3, paragraphs a. and b. of the Complaint. Paragraph a. alleges diversity of citizenship; and paragraph b. alleges that the suit arises under the Articles of the United States Constitution and the several Acts of Congress cited therein. Utility Manufacturing Co. vs. Elgin Laboratories, (S. D. N. Y. 1939) 22 D. J. Cull. 1, 1 Fed. Rules Serv. p. 30. The purpose of the New Rules of Civil Procedure is to avoid technicalities. R. 4 (d) (6) following section 723c of Tit. 28 U. S. C. A. Moore vs. City of Lehigh, 26 F. Supp. 39. See also Point (e) on page 13 of the printed parts of the Record of pleadings in the District Court.

The suit is of a civil nature or character and arises under the Articles of the Constitution and Laws of the United States which are cited in pars. a. and b. on page 3 of the complaint. State of Tennessee vs. Union and Planters Bank, supra in the Petition page ..... and cases in point.

Point two to Q. 2d. The application for the issuance and services of summons which is set out on pp. 1-2 of the complaint is based upon the principles established by the courts ever since they were established. See Lovelands Federal Forms; Fosters Federal Practice; Hughes Federal Practice; and Bishop's Forms. See also Bender's Forms Practice in the Federal Courts.

Point three to Q. 3rd. The best argument on this question is to be found in the exhibits submitted to the District Court some of which are made parts of the present Petition and Briefs and submitted herewith.

Point fourth to Q. 4th: The best argument in support of an affirmative opinion is to be found in the Records of the Twelve (12) cases cited on pages 3-4, and again on page 65 of the Brief to C. C. A. 3rd C. which is made part of this brief; and the five (5) cases Numbered 4193, 4194, 6468, 7525, 8027 Circuit Court of Appeals Third Circuit; and in the certified exhibits submitted according to law. (Judicial Code, Judicial Notice. 28 U. S. C. A. sections 687, 688, 695, pp. 54-55 of brief to C. C. A. 3rd C.

The respondent Utah Fuel Company, during the years 1907 to 1918, was the owner and operator of the village, yards, and mines Nos. 1 and 2 Clear Creek, Utah, as well as several other villages and coal mines in Carbon County, Utah. In the year 1909, or thereabout, it had labor trouble and summoned this petitioner to assist its officers to ascertain the cause. Having received a clear service in the inquiry conducted from room to room in the mines its General and resident Superintendent appointed or drafted, the respondent its interpreter. For the sum of 50 cents a day it required to him to attend the hirings of all Greek miners; the making out of their questionnaires; to attend the resident doctor at the respondent's local hospital in all sickness and injuries of its said employees; and settle every claim against it arising in the course of employment, and to do so in its favor regardless of the merits of the injury or sickness, and injuries and death or deaths; to attend and assist two (2) accident insurance companies in the issuance of policies to the miners; to attend and assist the company doctor in making out the insurance claims of the miners and see to it that all such claims were made good. In the light of the compensation of 50 cents a day the respondent company and its officials were utterly out of reason. Petitioner gave Notice to the officials of the respondent company to the effect that he no longer wished

to serve them as their interpreter but that he will continue his employment as miner. On this the petitioner insisted.

The defendant company and its officials maintained a "blacklist" of every objectionable employee and had it posted in its main office just inside and above the window where all inquiries regarding employees and employment were conducted. A systematic boycott was strictly enforced against all complainants. The same misfortune was put in force and operation against this petitioner and it is carried on to the point where this honorable court receives it. See the certified Exhibits and its pleadings as filed in the District Court and in the C. C. A. 3rd C.

Point 5 to Q. 5th: The best argument on this question is to be found in the provisions of Fed. Rule 20 (a). See par. 16, p. 12; par. 17, pp. 12-13-14, points (a) to (f) of the printed parts of the Record of Pleadings filed in the district court; II. Joinder of Parties Defendants. F. R. C. Proc., R. 20, pp. 1-to-21 of brief to C. C. A. 3rd C.

Point 6 to Q. 6th: The best argument the petitioner is able to give is to be found in section 729 U. S. C. A., Tit. 28 (R. S. Sec. 722) and the authority of the cases of Tennessee v. Union and Planters Bank, material parts of which are set out in the Petition supra, pp. 29-30-31; United States vs. Thompson Ex Parte United States, set out on the appendix of the Petition, and cases in point.

Point 7 to Q. 7th: In the prosecution of the conspiracy set forth in the complaint and the exhibits submitted, the respondents violated the following Articles of the United States Constitution: Articles IV, V, VIII, and XIV. See material parts of which is quoted on page 2a, Section 41 of Tit. 8 U. S. C. A. quoted on page 3a; Section 47 of Tit. 8. See it on pages 104-105 of the printed parts of the Record; Sections 1, 2 and 3 of Tit. 15, U. S. C. A. See sections 1, 2

and 3 on page 4a of Brief to C. C. A. 3rd C.; The respondents also violated sections 52, 54, 88, 231, 550, and 408. See the said sections quoted on pages 6a et seq.

As to the influence of the respondent Utah Fuel Company, controlled and controlling and associated corporations see its Articles of Incorporation parts of which are quoted and set out on pages 7, 8, 9, 11 of the brief. During those years set forth above, the respondent company have had and enjoined a complete monopoly of the coal mined in the State of Utah. Their strangulation of things in the State of Utah was complete. See the certified exhibits.

Point 8 to Q. 8th: The exhibits submitted present the best argument to question 8th. (Sections 687, 688, 695 of Title 28 U. S. C. A.) If this suit is a case at all it is one in conspiracy. The conspiracy and boycott begun in Carbon County, in the State of Utah and was carried on in said state for years thereby drove this petitioner and his brother out of said state. The records show that in the year 1919, the respondent Utah Fuel Company was well represented in the District of Columbia. United States Senator Reed Smoot (See the certified Annual Report in the Record) became its director and Vice-President and must be presumed that he was the best man of the respondent company taking care of things natural in Washington, D. C. He posed to have more influence in the United States Government than any other senator. He and his friends made the best start there.

(See the beginning of the criminal prosecutions). Your petitioner is far from being of the class of persons without a sin, but he has a clean and noble character record.

Point 9 to Q. 9th: The construction and application of section 103 of Tit. 28 U. S. C. A. is already before this court and before all the other courts of the United States. See citations on pages 24-25 of the Petition supra; and

pages 28, 29, 30, 31, 32, 33, and 34 of the brief to C. C. A. 3rd C.

Point 10 to Q. 10th: Where the crime shall have been committed. The 6th Article of the United States Constitution. See the argument in the Petition supra, p. 6; And when any offense against the laws of the United States shall be begun in one judicial district of the United States and completed in another, every such offense shall be deemed to have been committed in either of said districts, and may be dealt with, inquired of, tried, determined and punished in either of said districts. 28 U. S. C. A., Sec. 103. See par. b on page 56, paragraphs 1 to 28 of XVI on pages 55 to 65 of brief to C. C. A. 3rd C., par. 17 on p. 28 of brief and cases cited therein.

Point 11 to Q. 11th: The boycotting, persecutions and prosecutions consumed the petitioner's earning for a period of at least 25 years, and to require him to chase backwards his wrongdoers from state to state while the principal defendant, their procuror, would be here in New Jersey would be vain procedure. The law should and ought to be enforced as against all. Snydam v. Broadnax, 14 Peters 67; Union Bank vs. Jolly's Administrators, 18 How. 503. The conspiracy set forth in the complaint is defined by Chap. 119. Conspiracy. 2:119—Revised Statutes of New Jersey and Revised Statutes of Utah, Chap. 11. Criminal Conspiracy defined. See pages 92-93 (Sections 725 and 729, Title 28, U. S. C. A.).

Point 12 to Q. 12th: The conspiracy will be operated in the court rooms of the federal court for the district of New Jersey to the same effect and for the same purposes for which it was openly operated by William V. Rosenkrans and Ex-Judge Thomas Glynn Walker (see the Record). There is already a failure of justice, for the reasons that those of the respondents who personally and actually con-

ducted and operated the leading parts of the conspiracy, committed the perjuries, issued the perjured certificates and conducted mob trials on the grounds and for the reasons that your petitioner sued the respondent Utah Fuel Company, are no longer before the court having been discharged by the said ex-district judge.

Point 13 to Q. 13th: The district court of the United States for the district of New Jersey, has wrongfully and unlawfully and in violation of the provisions of the Articles of the U. S. Constitution cited in point 7, supra; Subdivisions (1), (see par. 8 on p. 23 of former brief); (2) (see par. 8, on pp. 23-24 of former brief); (12) (see par. 10 on p. 24 of former brief); (14) (see it on p. 24 of former brief); (17) (see it on p. 24 of brief); and (23) (see it on p. 26 of former brief), of Section 41 of Title 28, U. S. C. A.; Sections 43 and 47 of Tit. 8, U. S. C. A.; the Sections of title 18 which are cited in point 7 supra and quoted in the Appendix of the former brief to C. C. A. 3rd C.; Sections 103, 371 (see it on pages 15a-16a); 377 (see it on p. 45 of former brief); 504 (see it on p. 72 of former brief); 725 (see it on p. 6a. of former brief); 687, 688, 695 (see them on pp. 54-55); and 729 (see it in the Petition on p. 27; and on pp. 8-9 of the printed parts of the Record); Argument: VIII, b. on pp. 45-46; Opinion of the Court below is set out on pages 17-22; Opinion of this Court in re Hague vs. Committee of Ind. Organization, (see pp. 37 to 45); XVIII, page 75 of brief and cases cited therein; XXII, page 83 and cases cited therein.

Point 14 to Q. 14th. The best argument on the question is the Opinion of this Court in Mayo v. Lakeland Highlands Canning Co., 309 U. S. 521, 60 S. Ct. 521, (3) See pp. of the Petition and cases cited thereunder to page 11.

Point 15 to Q. 15th: The suit is one within the exceptions mentioned in section 5 of the Act of March 3, 1875,

as amended by the Acts of 1887-1888. See page 1 et seq. of the petitioner's Memorandum as filed in the C. C. A.; Title 24 of the Revised Statutes of the U. S.; the exceptions mentioned in said paragraph 5 have been brought forward by the Act of March 3, 1911 and embodied in the subdivisions of section 41 of Tit. 28 U. S. C. A. which clauses are cited in POINT 13 supra. The said section 1 of the said Judiciary Acts applies to and governs the suit in so far as the diversity of citizenship is concerned (par. a. on p. three (3) of the Complaint). The exceptions mentioned in said section 5 of the said Judiciary Acts apply to and govern the suit on the grounds cited and mentioned in par. b. on page three (3) of the Complaint. Hague vs. Committee of Ind. Organizations and cases in point. See also the said subdivisions of the said section 41 of 28 U. S. C. A., pp. 37-41 of former Brief; State of Tennessee vs. Union and Planters Bank, supra. United States vs. Thompson, supra; Ex Parte United States, supra, and cases in point.

Point 16 to Q. 16th: The instant suit in its conspiracy character is governed by the provisions of the above mentioned clauses of the above mentioned section 41 of Tit. 28 U. S. C. A.

Point 17 to Q. 17th: The best argument is to be drawn from the Judicial Notice of the Records of the cases cited on pp. 34 and again 64 of the brief to the C. C. A.; and in the Exhibits submitted, as to the district court and the Records of the cases in the C. C. A. 3rd C. cited above on page 6; Argument: XI, on p. 48 and cases cited; XVIII, and cases cited therein.

Point 18 to Q. 18th: The records and decisions of the C. C. A. 3rd Circuit in the cases in which this petitioner was a petitioner or appellant before said court and the argument cited in Q. 17th, supra, is the best proof to the effect that the said C. C. A. 3rd C. has repeatedly refused

to grant to this petitioner the equal benefits of the laws governing the proceedings before it, in violation of and in conflict of all its own decisions and the decisions of all the other U. S. Circuit Courts of Appeal, and of this Court. It is the duty of the said Circuit Court to command the district court to assume jurisdiction of the conspiracy complained of and do make due inquiry of the facts and merits of the plaintiff's pleadings by examining his witnesses. This is an imperative duty, which may not be renounced, and whose discharge may not be evaded by the said C. C. A. 3rd C. (XVIII, on p. 75 and cases cited therein).

Point 19 to Q. 19th: The reasons given by the district court in its Findings of Fact and Conclusions of Law are in conflict with the provisions of the subdivisions of section 41 of Tit. 28 which are cited in point 7, supra.

The said Order is in conflict with the decisions of this Court: Hague vs. the Committee of Industrial Organization, supra, and cases in point; State of Tennessee vs. Union and Planters Bank, supra, and cases cited and cases in point; United States vs. Thompson, supra and cases in point; Ex Parte United States, supra, and cases in point; United States vs. Wood, supra and cases cited and cases in point. In violation of the said laws of the United States, the district court discharged the conspirators and forcibly suppressed the conspiracy.

Point 20 to Q. 20th: Argument, Statutes, authorities and citations in XXI, on pp. 80-81-82 of the former brief apply to and control this question.

Point 21 to Q. 21st: APPEARANCE FOR PURPOSE OF MOTION. In re Marcus et al., 21 Fed. 2d. 483, (2).

Appearance and answer in rule to show cause (on Motion etc.) confers jurisdiction regardless of sufficiency of service. Ex Parte Craig. (C. C. A. 2d Circuit, 1922) 282 F. 138.

Defendant in error may not deny pendency of motion to strike where he appeared generally and participated in argument. Joshir vs. Snedec, 259 P. 41, 82 Colo. 245.

MOTIONS.

(42 C. J.) (Sec. 64) G. Waiver—1. It is competent for a party to waive want or irregularity of Notice of Motion. See also the cases cited thereunder in Note 31.

(42 C. J.) (Sec. 64) 2. By Appearance—An appearance and contest a motion without preliminary objection is a waiver of any irregularity or defect in the Notice and see cases cited thereunder in Note 39; or of the objection that the notice was too short. See cases cited under Note 40.

Evidence. Federal Rule 43. See also the Exception filed in the district court which is attached here to this brief.

The appearance of H. Collin Minton, Jr. and his participation in the argument of the Motion for Leave to submit the exhibits waived whatever, if any, objections to the notice of motion may have been present. See the Receipts of Registered mail as photostated and made a part of the photostated Record: the Notice of Motion, Motion and Affidavit thereto which are parts of the Photostated Record.

Point 22 to Q. 22d: The best argument in the affirmative is to be found in:

(a). The unnumbered page of the brief to C. C. A. 3rd C. Headnote to the Questions Involved,

(b). The first Motion filed by this petitioner in the said C. C. A. 3rd C. to strike the first Memorandum filed by the respondents. Motion dated Sept. 28, 1942.

(c). The Second Motion filed in the C. C. A. 3rd C. by the petitioner to strike the second Memorandum filed by the appellees and their attorneys. Motion dated Oct. 6, 1942. And:

(d). Appellant's Memorandum to said two motions.

Point 23 to Q. 23rd: The best argument is to be found in the docket entries as certified by the Clerk of the C. C. A. 3rd C. The said certificate is attached to this Brief and made parts hereof. See pp. 311-313.

Point 24 to Q. 24th: The best argument in the affirmative is to be found in paragraphs 7, 8, 9, 10 of petitioner's Memorandum to the said motions to strike as filed in the C. C. A.

Point 25 to Q. 25th: The Memorandums filed in the C. C. A. 3rd C. by the respondents and their counsels are obscene and objectionable pleadings for the reasons more fully appear in their statement of the case as stated in the first and second memorandum. In their first Memorandum the respondents and their attorneys say: . . . Accordingly, . . . we wish hereby to adopt and to stand upon the said Memorandum of Appellees as previously prepared by Messrs. Minton and Campbell and filed with this Honorable Court.

On p. 3 of their Argument in the memorandum referred to above the respondents state: The basis of the motion to strike the complaint is due to the impossibility of framing an answer to the complaint by reason of its vague, indefinite, incoherent and unrelated allegations and scandalous nature. . . . In other words, on account of the factual basis for the motion made in the District Court, it would be impossible to prepare answers.

The said objections or pretences are presumed to have been dismissed by the District Court and in fact they are nothing more than scandalous charges. Again, refusing to proceed according to the Statutes and Rules of Practice and Procedure, they laid low and at the end of the time for the hearing of the appeal they filed their said Memorandums to dismiss the appeal.

Point 26 to Q. 26th: There should be a fair compliance with rule 52 (a) of the Federal Rules of Civil Procedure following section 723c of Tit. 28 U. S. C. A. Roberts, J. in Lakeland Highland Canning Company, 309 U. S. 521, 60 S. Ct. 52; See also Par. K. (4) of the Petition and cases cited thereunder.

In the instant suit the District Court gave no reason in its findings of fact and conclusions of law for granting the respondents', Utah Fuel Company's and H. Collin Minton, Jr., Motion to strike Counts 23rd and 24th. It further appears in the said findings that the District Court proceeded: MOTION NO. 4.

The Utah Fuel Company moves to strike the complaint on the grounds more particularly set forth in its notice of Motion.

Paragraph 8 of the said Notice of Motion set forth:

8. The twenty-third and twenty-fourth counts contain scandalous charges that the defendant company conspired with petitioner herein to maliciously renew and reopen the alleged persecution of the plaintiff—although it appears from the allegations of the plaintiff that petitioner herein appeared in behalf of defendant-company in answer to a complaint filed by said plaintiff against said company-defendant.

The Petitioner herein wishes to ask this Court if an appearance made in behalf of defendant-company in answer to a complaint filed by said plaintiff against said company-defendant, authorizes the Counsels or Attorneys of said defendant-company to go before the District Court and argue: . . . We have no defense to the suit. Dismiss his case and put him in. They do (give judicial promotions to those who assist the company-defendant) that; they do those things; and they do the same thing with you

(To Hon. Phillip Forman, D. J.). . . . See Count twenty-fourth on page 24th of the Complaint.

The Original Complaint alleges two (2) jurisdictional grounds: (1) Diversity of citizenship; and (2) Suit arises under the Articles of the United States Constitution and the Statutes of the United States cited in the Caption of the Petition and on page 3 of the Complaint. Utility Manufacturing Co. vs. Elgin Laboratory, supra.

The Complaint was printed in the form in which it is received by this Court, and the District Court refused to read, consider and give a fair construction and application of the provisions of federal rule 52 (a); and refused to decide all the Counts. The Counts in the Complaint present the Questions Involved, which questions determine the character of the suit. State of Tennessee vs. Union and Planters Bank, supra, citing Osborn vs. Bank of United States, supra. See also V on pages 42-43; b. of VII; and XVIII on p. 75 of former brief.

CONCLUSION.

Adoption by reference to the former brief filed in the C. C. A. 3rd C. See pages 95-97 inclusive.

1. The Original Complaint alleges two jurisdictional grounds; (1) Diversity of citizenship;

(2). Suit arises under the Articles of the Constitution and Laws of the United States and treaties made under their authority. See Point 7 to Q. 7, supra.

2. If this action is a suit arising under the Constitution and Laws of the United States, it arises under said Articles of the United States Constitution and the several Acts of

Congress which are cited in said sections of said Titles, supra.

3. The findings of fact and conclusions of law of the District Court are based solely on ground (1).

4. The provisions of said Articles of the United States Constitution and Acts of Congress cited in par. b. on page three (3) of the Complaint have been excluded from the reasons given by the District Court from its said Findings of Fact and Conclusions of Law. Fed. Rule 52 (a) Mayo vs. Lakeland Highlands Canning Co., supra, and cases cited thereunder. See p. 11 of the Petition here.

5. The respondents are represented by numerous and influential attorneys, including the Attorney General and Assistant Attorney General of the State of Utah. The respondents and their said attorneys have the true facts which are alleged in the complaint in their Official Records, as well as in the Records of the Courts and it must be presumed to have first hand knowledge of all the facts pleaded by the petitioner. In addition to these the Exhibits submitted. The respondents' very own acts have been certified by the proper authorities before whom they staged their mob tactics because this petitioner sued the defendant-company. And that is something. (Sections 687, 688, 695 of Tit. 28 U. S. C. A.)

The Findings of Fact and Conclusions of Law, if supported by any substantial competent evidence, are conclusive. Mayo vs. Lakeland Highlands Canning Company, and cases cited thereunder, supra, page 11 of Petition in par. K. See also those citations which are cited on page 57 of the printed Complaint.

6. The respondents and their attorneys, recognizing the facts to be that they have no legal defense to the facts alleged in the complaint; filed not any objection or exception to the Findings of Facts and Conclusions of Law of the District Court; and took no appeal therefrom (Statutes, Authorities and citations cited and set out on the unnumbered paragraph of the former brief. Headnote to Questions Involved, on page 1; Motions first and second and Memo. thereto filed by the respondent in the C. C. A. 3rd C.).

7. It must be presumed that it has been established that the jurisdiction of the District Court over the instant suit arises under the Constitution and Acts of Congress of the United States. All these contain ingredients of the original cause under the Industrial Act of the State of Utah, under the contract of insurance, and under the circumstances in which this petitioner was placed by the respondent Utah Fuel Company. This being the case, it is in the power of Congress to give the District Court jurisdiction of this cause. State of Tennessee vs. Union and Planters Bank, supra, and cases in point. (28 U. S. C. A., Sec. 729).

8. The Articles of the United States Constitution and the sections of the Several Acts of Congress under which jurisdiction of the suit arises are cited in the Caption of the Petition; point 7 to Q. presented 7 and quoted in the Appendix of the former brief to the C. C. A. 3rd C. The District and Circuit Courts must apply and construe said Articles of the United States Constitution and sections of the said Acts of Congress, and both of them have had repeatedly failed to do so leaving the defendant Utah Fuel Company and others to carry on the conspiracy set forth in the complaint. An examination of the Exhibits

submitted will show that the conspiracy is carried on against the safety of the public; against the public policy; and in violation of the United States Constitution and Statutes of the United States thereon. The facts that this petitioner sued the said defendant-company for a just and legal cause does not justify the defendant-company, nor any other individual, to carry on the conspiracy alleged in the Complaint. (The law should and ought to be enforced against all. See V. on page 42 of former brief and cases cited therein.)

9. The exercise of the powers conferred upon the said District and Circuit Courts by the Constitution and Acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of process, are not discretionary with said Courts. It is their duty to deal with the conspiracy properly presented to them (XI, page 48; XVIII, page 75; VIII, pages 45-47 of former brief to C. C. A. 3rd C.).

10. The said Federal Courts have power to command obedience to the Constitution and Acts of Congress of the United States and to keep the peace to the extent governed by the Constitution and Laws of the United States (In re Subolt, 100 U. S. 871 on p. 895 see parts of in VIII, b. on pp. 45-46 of former brief.).

11. It is an imperative duty of these said Courts to summon and hear, before decision, every necessary party in the suit and to consider the evidence against said parties in the exhibits submitted. These said Courts must execute the powers and functions conferred upon them by the said Articles of the U. S. Constitution and Acts of Congress as well in this case as in every other case. Harboring and

entertaining the respondents is against the safety of the public and their public policy.

12. An imperative duty is imposed upon these said Courts to exercise the powers conferred upon them by the said Articles of the United States Constitution and said Acts of Congress (XVIII, and cases cited therein). These duties may not be evaded in the instant suit because this petitioner happened to be a Greek and the conspirators American citizens; this petitioner may not be singled out and dealt with in the manners set forth in the certified exhibits, thus establishing prejudicial-racial principles which are contrary to the sprit of the XIVth Amendment to the United States Constitution (Amend. XIV, Sec. 1, Tit. 8, U. S. C. A. Civil Rights, Sections 41, 43, 47; Title 24. R. S. See Memorandum to C. C. A. 3rd C.; Tit. 28, U. S. C. A. Section 41, subdivisions: (1), (2), (12), (14), (17), (23). See pp. 23-26, former brief to C. C. A. 3rd C.; 103, 687, 688, 695, 725, 729; Title 15 U. S. C. A., Sections 1, 2, 15, 22, 24 et seq; See also the several sections of Title 18 U. S. C. A. quoted in the Appendix of the brief to C. C. A.; Section 5 of the Act of Congress of March 3, 1887, supra; State of Tennessee vs. Union Planters Bank, supra; U. S. vs. Thompson, supra; Ex Parte United States, supra; Ex Parte Peterson supra, and cases in point and cases cited therein.

13. The reason given by the District Court on Motion No. 5 is not supported by the facts, the notice of motion and motion papers thereon, the registered mail by which the respondents were served by this petitioner, and the appearance and participation in the argument of the respondent H. Collin Minton, Jr., attorney of record for himself and several of the other respondents and who insists that he appears for all of those defendants who are not represented by any other attorney.

14. (See the Order of the District Court on pages 17a-22a of the Appendix to the Brief C. C. A. 3rd C.) The reasons given by the District Court on motions numbered 2, and 3, are:

. . . ; except as provided in sections 113 to 118 of this title, (28 U. S. C. A.) no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; . . .

The foregoing clause is to be found in the second clause of section 112 (Judicial Code, section 51, amended) of Title 28 U. S. C. A., 28 U. S. C. A. 112. Civil suits; arrest in; district where brought; effective period.—(a).

The exceptions enumerated therein are:

Sec. 113 (Judicial Code, section 52.) Suits in states containing more than one district; Sec. 114 (Judicial Code, section 53.) Districts containing more than one district; transfer of criminal cases; Sec. 115. (Judicial Code, section 54.) Suits of local nature; Sec. 115. (Judicial Code, section 55.) Property in different districts in same state; Sec. 117. (Judicial Code, section 56.) Property in different states in same circuit; jurisdiction of receivers; Sec. 118. (Judicial Code, section 57.) Absent defendants in suits to enforce liens.

The provisions of the foregoing enumerated sections do not apply to the instant suit; nor does the inhibition found in the second clause of section 112 (Judicial Code, section 51, amended) apply to and govern the instant suit.

Turning to the Index of the *CODE OF LAWS OF THE UNITED STATES* (*of 1925*) we find:

CIVIL RIGHTS.

Action for deprivation of rights. Form of action, p. 123, Sec. 43, Jurisdiction, p. 867, Sec. 41 (12-14)
Persons liable, p. 123, Sec. 43

Conspiracy, p. 124, Sec. 47 (1), (2), (3)

Criminal Prosecution for denial or abridgment, see Crimes and Offenses

Enforcement proceedings governed by Federal Statutes, p. 935, Sec. 729

Review of proceedings for denial of civil rights, p. 123, Sec. 46; p. 895, Sec. 225; p. 906, Sec. 345.

It follows, therefore, that for the reasons and/or grounds which are present in the instant suit, the suit is governed by the provisions of the several sections of title 8, U. S. C. A. U. S. C. A. the cited sections supra; and 18 U. S. C. A. the sections quoted in the Appendix of the brief to C. C. A. 3rd C.; Secs. 1 to 7, 15, 22, 24 of Tit. 15 U. S. C. A.

It follows that for like reasons, the reasons given by the district court on motions numbered 2 and 3 are inapplicable to the instant suit.

It further follows that for like reasons, the reasons given by the District Court on its ruling on motion numbered 1, are inapplicable to the instant suit. See the Findings of Fact and Conclusions of Law of the District Court on pp. 17a-22a of the Appendix of the former brief.

There is but a single question determinative to the instant suit: Whether the instant suit is a proceeding for the protection of this petitioner herein and plaintiff in the district court in his civil rights, and for his vindication of those rights of which he has been deprived?

The Answer is to be found in the Complaint and exhibits submitted.

15. The employment conditions which resulted from the war now on hamper the operations of the respondents and their numerous associates and assistants and make it possible for this petitioner to prosecute this his cause; was

it not for the war he would not have been able to present his cause in any manner and form whatsoever. May it please the Court see the Record of Pleadings and Exhibits.

16. An Act of Congress of the United States (R. S. Sec. 1976.) provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, (- - - * * * *) or causes to be subjected, (* * * - - -) any citizen of the United States, (* * * - - -) or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable (* * * - - -) to the party injured in an action at law, suit in equity, or other proper proceeding for redress. Section 43 of Title 8, U. S. C. A. (R. S. Sec. 1979.)

The respondent Utah Fuel Company and its controlling and controlled corporations, in order to cover their sinister aims, and sinister operations, resorted to the use of the means which are set forth in the Complaint, pleadings, and exhibits thereof, subjected and subject, or (and) caused to be subjected, and do cause to be subjected this petitioner to the deprivation of the rights, privileges, or (and) immunities secured by the Constitution and Laws of the United States, thereby injured and continuously injuring this petition.

It must be presumed that the respondents in this proceeding and defendants in the District Court are liable to this petitioner in the action at law thus so legally brought and legally prosecuted in accordance with the Federal Rules of Civil Procedure following Section 723c of Title 28 U. S. C. A. This Proceeding for Redress is a proper proceeding within the meaning of the said Act.

By reason thereof and of the said provisions of the said

Act of Congress, the Provisions of Section 47 of Title 8, U. S. C. A. and the provisions of Secs. 1 to 7 of tit. 15, U. S. C. A., the Order of the District Court is tainted with prejudice, partiality in favor of the respondents and is so framed as to deny this petitioner the equal benefits of all laws and proceedings for the security of the person and property of this petitioner. (Sec. 41 of Tit. 8, U. S. C. A.; The 14th Amendment of the United States Constitution).

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers in order that the errors herein pointed out may be corrected; that the law may be properly and authoritatively defined, applied, and construed, and that the Findings of Fact and Conclusions of Law of the District Court should be modified according to right and justice, and the Constitution and Laws of the United States; and the issues of fact and of law which arose or formed by the pleadings; and that the judgment of the Circuit Court of Appeals for the Third Circuit Affirming the Order of the District Court should be reversed in order that justice may be done to petitioner; and that to such an end a writ of certiorari should be granted and this court should review the decision of the United States Circuit Court of Appeals for the Third Circuit and finally reverse it.

Nicholas J. Curtis, LL. B.,
Petitioner Appearing in Person,
Post Office Box 972, Trenton,
New Jersey.

Dated this 29th day of December, A. D., 1942.

United States Circuit Court of Appeals

Third Circuit, Philadelphia, Pa.

NICHOLAS J. CURTIS,

Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, a corporation, its officers and agents, specifically; DR. E. R. MURPHY; DR. ROBERT S. ALLISON (deceased); DR. FRANCIS S. BASCOM (deceased); H. COLLIN MINTON, JR., and FERDINAND ERICKSEN, its attorneys; NICHOLAS J. PAPPAS, Paterson, N. J.; HELEN N. PAPPAS, Paterson, N. J.; SORTIRIOS NICHOLAIDIS, Paterson, N. J. (not served); HARRY SUSSMAN, Paterson, N. J.; WILLIAM V. ROSENKRANS, Paterson, N. J.; LOUIS BROWNLOW, Washington, D. C. (not served); CHARLES W. KUTZ, Washington, D. C. (in default); DR. PERCY HINKLING, Washington, D. C. (deceased); WILLIAM H. FAY, Washington, D. C. (cannot be found); WILLIAM J. HAZEN (MELVIN J. HAYS), Washington, D. C. (cannot be found); WILLIAM H. FOLLAND, Salt Lake City, Utah (in default; no motion or other pleading); DR. LESLIE J. PAUL, Salt Lake City, Utah (no appearance; in default); DR. SAMUEL WOLF, Salt Lake City, Utah (deceased); SIMON BAMBERGER, Salt Lake City, Utah (deceased, BAMBERGER COAL CO. substituted); DR. FREDERICK DUNN, Springville, Utah (appear by Special Appearance, name only); DR. FRED W. TAYLOR, Provo, Utah (no appearance; in default); DR. A. C. CALLISTER, Salt Lake City, Utah (appearance by Special Appearance, name only); DR. D. E. SMITH, Salt Lake City, Utah (appearance by Special Appearance, name only); CAROL C. JOHNSON, New York (Motion to Vacate); JOSEPH RIRIE, Salt Lake City, Utah (deceased); D. O. LARSON, Salt Lake City, Utah (no appearance; in default); CHARLES E. MAYBE, Salt Lake City, Utah (no appearance, name only on Special Appearance list, no Motion or Affidavit); MARK TUTTLE, Salt Lake City, Utah (no appearance; in default),

Appellees.

APPEAL FROM THE MEMORANDUM DECISION AND TWO ORDERS SIGNED AND ENTERED THEREON OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, NO. 728, CIVIL ACTION.

C. C. A. 3rd C. Case No. 8027.

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CAROL C. JOHNSON,
Defendant, Absconding.

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At the commencement of and during the course of an action, all remedies . . . are available, . . . Existing Statutes of United States governs to the extent to which it is applicable . . .

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STATEMENT OF ACCEPTANCE BY APPELLANT.

The Findings of Fact and Conclusions of Law so made by the Court below, insofar as the decision holds the defendant, Utah Fuel Company, responsible on Seventeen Counts of the Complaint.

The defendant, Utah Fuel Company, having been adjudged responsible for the acts and facts set forth on Seventeen Counts of the Complaint, have had a right to appeal there from said decision to this Court and to file its Grounds of Appeal with the Clerk of the Court below within three months after the date of entry of said Memorandum Decision; and having not done so, it must be strictly held to the same thereof for the reason that this Court has acquired no jurisdiction for such an appeal.

The Appellant bases this, his Statement, on the following Authorities and cases cited and cases in point, to-wit:

Hughe's Federal Practice, Sec. 27021.—Necessity of Notice of Appeal. An appeal must be properly perfected, citing McBee v. Palmer, C. C. A. Wash. 1935, 73 F. 2d 342.

Members of the Bar of an Appellate Court are bound to know the rules of the Court. A failure to docket a case in accordance with those rules, because of alleged lack of knowledge thereof, will not excuse a failure to comply with them. R. 74, Joint or Several Appeals to a Circuit Court of Appeals.

28 U. S. C. A., Sec. 230.—Time for Making Application for Appeal. No appeal intended to bring any judgment or decree before a Circuit Court of Appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree. (Mar. 3, 1891, Ch. 517, Sec. 11, 26 Stat. 829; Feb. 13, 1925, Ch. 229, Sec. 8(c), 43 Stat. 94; Jan. 31, 1928, Ch. 14, Sec. 1, 45 Stat. 54.)

Hughe's Fed. Pr., Sec. 27014. Within the time prescribed the Notice of Appeal by which one initiates an appeal to a Circuit Court of Appeals must be filed within the time fixed by statute for appealing or the Court of Appeals acquires no jurisdiction of the cause, citing Chase v. Holmes, 19 Cal. App. 670, 127 P. 652, other cases follow here.

The general statutory rule is that one must initiate appellate procedure to a Circuit Court of Appeals within three months after the date of entry of any judgment or decree he wishes to appeal to a Circuit Court of Appeals, citing 28 U. S. C. A., Sec. 230.

Hughe's Federal Practice, Sec. 27016.—May Appeal From. An "Appeal" is the removal of a cause from one judicial tribunal to a higher tribunal for review of the proceedings in the lower court. City of Birmingham v. Louisville & N. R. Co., 213 Ala. 92, 104 So. 258.

STATEMENT OF THE QUESTIONS INVOLVED.

I. What is the nature of the action?

II. Were the defendants in the suit properly joined?

III. Has the Court below jurisdiction of the subject matter and of the parties?

IV. Are the offenses which are denounced by the Criminal Statutes of the United States confined to such acts as injure the United States, or they are applying as well to all conspiracies that affect private rights?

V. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in Sections 729 and 103 of Title 28 U. S. C. A.?

VI. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in Section 725 of Title 28, U. S. C. A.?

VII. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in Section 371 of Title 28, U. S. C. A.?

VIII. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in Section 377 of Title 28, U. S. C. A.?

IX. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in: a. The last sentence of Subd. (1); b. Subd. (2); c. Subd. 12; d. Subd. 14; e. Subd. 17; f. Subd. 23 of Section 41 of Title 28, U. S. C. A.?

X. Has the Court below the power or any legal right to refuse to exercise, apply and construe the power conferred upon it by the law found: a. In Section 687; b. Section 688; c. and Section 689 of Title 28, U. S. C. A.?

XI. Has the Court below the power or any legal right to refuse to exercise, apply and construe the power conferred upon it by the law found in Sections 1, 2, 4, 5, 15, 22, and 24 of Title 15, U. S. C. A.?

XII. Has the Court below the power or any legal right to refuse to exercise and enforce or apply and construe the law found in Sections 41, 43, and 47 of Title 8, U. S. C. A.? Also Sections 52, 54, 88, 231, 232, 237, 238, 242, 243, 244, 245, 408, "550," and 571 of Title 18, U. S. C. A.?

XIII. Has the Court below the power or any legal right to refuse to exercise and enforce or apply and construe the Federal Rules of Civil Procedure for the District Courts of the United States?

XIV. Are the acts and declarations, statements and charges (see page 29 of the Complaint) of H. Collin Minton, Jr., as by him made in open Court and in the prosecution of the enterprise or conspiracy considered the acts of all the co-conspirators? Also the acts of the Defendant William V. Rosenkrans as by him made in open Court on the 22nd day of April 1940, as well as in all the cases filed against him and his co-conspirators in the court below; also those with which he executed and carried on the conspiracy before the Paterson District Court, so as to constitute overt acts committed within the jurisdiction of the Court below and to give it jurisdiction of the subject matter and of all the parties defendants?

XV. Does the miscarriage of the administration of justice by the Court below and the State Courts in the following cases, namely:

1. Curtis vs. Pappas, et als., Paterson District Court, Paterson, N. J.

2. Curtis vs. Peraino, 4th Judicial District Court Bergen County, Village of Ridgewood, Bergen County, New Jersey, two cases.

3. Village of Ridgewood vs. James Damis, Court of Chancery of New Jersey. Material parts of the case photostated and are in the Photostated Record in this Court.

4. Curtis vs. Peraino, Circuit Court of Bergen County, New Jersey.

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY.

Cases in which Nicholas J. Curtis is or was a party:

E-2331. Curtis vs. American Tel. & Tel. Co., et als. Order dismissing case without costs.

E-4129. Curtis vs. Citizens Nat. Bank & Trust Co., et als. Order dismissing case pursuant to General Rule 27.

E-5108. Curtis vs. Minas Candaras, et al. Order dismissing case with costs to defendants.

L-1722. Curtis vs. Paramount Famous Lasky Corp., et als. Order dismissing case.

L-4628. Curtis vs. Pappas, et al. Order striking out complaint with costs to defendants.

L-4759. Curtis vs. Pappas, et als. Order dismissing case pursuant to Rule 27.

L-5773. Curtis vs. Utah Fuel Company. Order granting motion to strike complaint and dismissing motion for rehearing.

L-728. Curtis vs. Utah Fuel Company, et als., now under consideration,

constitute overt acts sufficient for jurisdictional requirements to give the court below jurisdiction of the subject matter and of all the parties defendant in or to the action; and to bring the action within the jurisdiction conferred on the District Courts by the provisions of Chapter 3 of Title 8, and Title 18 for the protection of all persons in the United States in their civil rights, and for their vindication; also within the jurisdiction conferred on the Court below by the provisions of Sections 1 to 7, 15, 22, and 24 of Title 15, U. S. C. A.?

XVI. Were the nonresident defendants amenable to the process of the Court below?

XVII. Were the nonresident defendants properly served in accordance with any law of the United States?

b. In accordance with the laws of the State and District wherein services were made?

c. In accordance with the provisions of Federal Rule 4 (d) 7?

XVIII. Is the exercise of the power or jurisdiction conferred upon the Court below by the Constitution; the law found in Sections 41, 43, and 47 of Title 8, U. S. C. A.; the several sections of Title 18, U. S. C. A., particularly Section 550 of said Title 18; and

Sections 103, 725, 729, 371, 377, 41 last sentence of Subd.

(1), Subds. (2), (12), (14), (17), and (23) of Section 41 of said title 28, U. S. C. A., which statutes empower the court below to acquire jurisdiction of controversies on the nature of those set forth in the Complaint, discretionary with the court below, when a party plaintiff demands their protection and benefits?

XIX. Has the Court below any power, right, jurisdiction or authority to try Counts No. 2, 21st, and 22nd of the complaint on the motion of a lawyer who has been tried for fraud and for victimizing others, tried and convicted by the Court of Chancery of the State of New Jersey? Because of the defense put in by Rosenkrans for Harry Sussman, defendant out of district and never served, the present motion is also false, can the court below try such questions of fact on a false motion?

XX. Are members of the Bar (referring to H. Collin Minton, Jr., and Addison P. Rosenkrans and William V. Rosenkrans), who are aware of conspiracy of their clients and others to obstruct justice and accomplish unlawful purposes in litigations in which they are employed as attorneys, and who proceed there with them in the court wherein the conspiracy suit is pending, and aid, abet, counsel, command, induce or procure the obstruction of justice in the court which has the case under consideration, not responsible or answerable for their parts in the plot or conspiracy?

XXI. May the doctrine of Res Adjudicata be used as bases for a judgment which is obtained by concerted action, false swearing, fraud, collusion, and the introduction of the record of the case now under consideration in the Court below and in this Court in its early stage (see

Curtis vs. Utah Fuel Company, U. S. D. Ct., D. of Utah)?

XXII. Does the inhibition of the Judiciary Acts of March 3, 1887, c. 373, 24 Stat. 552, and Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 733 (Comp. St. (U. S.) 1901, P. 508), that no civil suit shall be brought before either of said Courts (the Circuit Courts and District Courts) against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, apply to and govern suits brought under the several sections cited in Points V to XII above?

XXIII. Assuming that the Court below had jurisdiction of the subject matter and of the parties, what is the general effect of the entries of the defaults against the eight (8) defendants in default?

XXIV. Is the refusal of the Court below to consider the Records and Judicial Proceedings which are the several acts and overt acts constituting in whole of the conspiracy set out in the Complaint and subsequent pleadings filed and exhibits submitted, duly certified by the proper authorities and duly submitted to it in proper form, a violation of any law of the United States?

XXV. What effect has the refusal of the Court below to recognize on the findings of fact and conclusions of law, and consider or apply and construe the Third, Fourth, Fifth, and Sixth Counts of the Complaint?

XXVI. What is the result or the effect of the refusal of the Court below to consider and construe the Sixth and Conspiracy Count of the Complaint and the exclusion of the same from its findings of fact and conclusions of law?

XXVII. Should the action be proceeded with without four of its best Counts be considered by the Court below?

STATEMENT OF THE CASE.

Introduction.

(a) (10 Inter. Rev.)
(Stamp. Can.)
UTAH COAL AND COKE COMPANY.

(Name changed to Utah Fuel Company eleven days after the date it was incorporated.)

(a) Certificate of Incorporation.

ARTICLE I. The corporate name is
"UTAH COAL AND COKE COMPANY".

ARTICLE II. The principal office is at No. 60 Grand Street, Jersey City. The agent therein, in charge thereof, is the Corporation Trust Company of New Jersey, upon whom process against the Corporation may be served.

ARTICLE III. The objects for which the corporation is established are:

(a) To purchase, lease or otherwise acquire coal mines or rights, coal lands or other lands convenient to the business of the Company in the State of Utah or elsewhere and any interest therein and to explore, develop and work the same; to buy, sell, manufacture and deal in coal and

various products thereof; to acquire for the business of the Company water power and to operate the same; to let out to others any part of the property of the Company; to acquire, own and operate stores for the sale of supplies to miners and employees of the Company; to acquire the stock of any Company owing such store or stores; to acquire the stocks, bonds and other securities of other coal mining companies or off other companies the business of which shall be related to or useful to the business of the Company.

The following clauses shall be construed both as objects and powers:

(b) To manufacture, purchase, or otherwise acquire goods, wares, merchandise and personal property of every class and description, and to hold, own, mortgage, sell or otherwise dispose of, trade, deal in and deal with the same.

(c) To acquire and undertake the goodwill, property, rights, franchises and assets of every kind and the liabilities of any person, firm, association or corporation, either wholly or partly, and to pay for the same in cash, stock of the corporation, bonds, or otherwise.

(d) To enter into, make, perform and carry out contracts of every kind and for any lawful purpose with any person, firm, association or corporation.

(e) To borrow or raise money without limit as to amount by the issue of or upon debentures or debenture stock, or in such other manner as the corporation shall think fit.

(f) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments.

(g) To apply for, register, purchase, or otherwise acquire, and to hold, own, use and operate, and to sell, assign, grant licenses in respect of, or otherwise dispose of and deal with and turn to account any and all inventions, improvements, formulae, processes, trade names and trade marks, copyrights, letters patent of the United States and of any or all foreign countries, and patent rights of all kinds.

(h) To conduct business in any of the states, territories, colonies or dependencies of the United States, in the District of Columbia, and in any and all foreign countries, to have one or more offices therein, to hold, purchase, mortgage and convey real and personal property without limit as to amount, in any such state, territory, colony, dependency, district or foreign country, but always subject to the laws thereof.

(i) To remunerate any person or corporation for services rendered, or to be rendered, in placing or assisting to place or guaranteeing the placing of any of the shares of stock of the corporation, or any debentures or other securities of the corporation, or in or about the formation or promotion of the corporation or in the conduct of its business.

(j) To do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world.

(k) To mortgage its property or any part thereof in order to secure its own indebtedness or any other indebtedness or any obligation direct or collateral where such mortgage shall be approved as beneficial to the interests of the Company by the holders of not less than two thirds of the outstanding capital stock of the Company.

(l) To guarantee the payment of dividends or interest on any shares of stock or other securities issued by any other corporation whenever the Board of Directors shall approve such guaranty as in its judgments necessary or proper for the business of the corporation.

(m) In general, to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and to exercise all the powers conferred by the laws of New Jersey upon corporations formed under the act hereinafter referred to; it being hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation.

The duration of the corporation shall be unlimited.

ARTICLE IV. The corporation shall be authorized to issue capital stock to the extent of Ten thousand dollars ($10,000.00) divided into one hundred (100) shares, of the par value of one hundred dollars each.

The corporation, upon any increase of its capital stock, shall have power to create two or more kinds of stock of such classes, with each designations, preferences and voting powers or restrictions or qualifications thereof and with such provisions as to redemption thereof at not less than par as shall be lawfully prescribed with the assent of the owners of not less than three fourths of the capital stock existing at the time of the increase.

The capital stock with which the corporation will commence business is subscribed by the incorporators as follows:

Name	No. of Shares	Total par Value.
H. Emerson Dean,	5	$500
William Dulles, Jr.,	5	$500
Ezra De Forest,	5	$500
		$1500.

The Post-Office address of each of the incorporators is 60 Grand Street, Jersey City, N. J., the Post-Office address of the registered office of the Company.

(b) This is an appeal by plaintiff from the Orders of the United States District Court for the District of New Jersey made on the 25th day of November, 1941; and 28th day of November, 1941; the third and general Order submitted May 7, 1941, in favor of defendants Carol C. Johnson, William V. Rosenkrans, Nicholas J. Pappas, Helen N. Pappas, and Harry Sussman; Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabe (Charles R. Mabey) and William D. Sutton, and H. Collin Minton, Jr., after several hearings before Hon. Thomas Glynn Walker, and one hearing before Hon. William F. Smith, United States District Judges. In the first place the action is upon the Industrial Act of the State of Utah and is followed by conspiracy.

A civil suit for conspiracy is an action on case (Kamm, Inc. vs. Fling, et als., 175 Atl. 62), R. S. N. J. 2:119-1-2.

A civil conspiracy may be defined as a combination of

two or more persons to accomplish by concerted action an unlawful or oppressive object (National Fireproofing Co. v. Mason Builders Ass'n, 169 F. 259).

I. STATEMENT OF FACTS.

Nicholas J. Curtis, as plaintiff in his own behalf, instituted his suit in the United States District Court, District of New Jersey against the defendants above named, and on the First, Third, Fourth and Fifth Counts laying the damages in the sum of $6,341.11 and threefold that amount in the sum of $19,023.33, against the defendants or in the alternative against the Utah Fuel Company and three of its doctors named above as defendants; and charging the defendant Utah Fuel Company and its said doctors with wilful negligence on their parts in failing to promptly procure medical services, medical care, surgical operation, and hospitalization and/or hospital attention for Dan J. Curtis, an employee of said defendant Utah Fuel Company and brother of this plaintiff; and charging the defendant Utah Fuel Company and its said doctors of having drafted this plaintiff and assigned him or compelled him to use his own home as hospital, spend all the moneys necessary to care for its said patient-employee for or about 40 days, then remove and transport him with his own moneys to Salt Lake City to defendant's general hospital; and charging that after 60 days of malpractice in the home of this plaintiff to, at his own expenses, transport its said employee-patient to St. Mark's Hospital whereat, the defendant company, through its said doctors, charged its said employee-patient with incurable tuberculosis and gave to this plaintiff notice of that fact, having first removed said employee-patient from

its hospital (tubercular cases not allowed to stay in said hospital. See p. 104 of Declaration) and having put him out of it in a porch on the ground floor unsuitable for any person to be confined; and charging the said Dan J. Curtis, as such an employee had paid into a fund created for such purpose a monthly sum of money for such care and attention, and that the defendant company by reason of such contractual relation, and the Industrial Act of the State of Utah, was under duty to furnish such care and attention to him; and that while said Dan J. Curtis was employed and while on duty, he was suddenly taken violently ill, or was injured while so employed on hazardous R. R. Extra Gang work, and that he kept reporting his case to the defendant's doctor at the defendant's local hospital, and was not taken into the hospital, and was not given any medical attention at all, but was sent to the house of this plaintiff with directions—get out of here,—and when taken to said hospital by this plaintiff he was examined by the defendant's doctor and pronounced his case as "coming down with pneumonia" advising that the patient will be operated upon by him in the morning; that no such operation were ever performed by the doctors of the defendant Utah Fuel Company for a period of 40 days; that during said 40 days the defendant's doctor, defendant doctor Murphy, visited the said Dan J. Curtis once a day in the home and under the care of this plaintiff and gave castor oil capsules and other tablets and directed this plaintiff to timely give them to him; that at the end of forty days malpractice this plaintiff asked the defendant's doctors to send Dan J. Curtis to the defendant's general hospital and gave notice to him or them that he was not going to stand their malpractice any longer but that in case they refuse to remove the dying man from his home this plaintiff will use force, legal proceedings, to remove his dying brother

to a hospital, or will remove him at night secretly; and that then and only then the defendant's doctors ordered, directed and assigned the plaintiff to, at his own expenses, remove him from his home at Clear Creek, Utah, to its general hospital at Salt Lake City, Utah, and deliver him to the defendant's doctors there for proper medical attention and surgical operation; and that this plaintiff in the morning he removed his brother, the said Dan J. Curtis, from his then home and in doing so he was assisted to the train and on the train by the defendant's doctor then in charge of the local hospital in person; that at its general hospital its said employee-patient was received by the defendant's doctors and admitted to the defendant's hospital as the defendant's employee-patient and this plaintiff was relieved from any and all further duties to care for his said sick brother; this lasted for or about a week when the said Dan J. Curtis was put out of the hospital as an incurable tubercular and left to die outside the defendant's hospital; these did not agree with the diagnosis of the defendant Dr. E. R. Murphy first given at Clear Creek, Utah, and by reason of his love and sympathy for his natural brother and because Dan J. Curtis was put out of the defendant's hospital without any medical examination and care whatsoever, he had grown much worse by reason of lack of medical attention and care in the hospital; that then and only then and on said date plaintiff went to the Holy Cross Hospital and contracted admission to the same for Dan J. Curtis and in his behalf, and to Dr. Tyndale and his Associates for their services in the case and promised to pay and did pay doctors' consultation, X-Ray examinations, surgical operation, medicines, visits and all necessities necessary to take care of the sickness of the employee of the defendant Utah Fuel Company; the successful results of the hospitalization, medical treatment, care and

operation in the case demonstrated that it was the hospitalization, care, treatment and operation reasonably required to cure and relieve the said Dan J. Curtis from the effects of his sickness or injury, that being so the refusal of the defendant's doctors, after more than 60 days of malpractice, to furnish the dying man the necessary hospitalization, medical and surgical care and operation warranted his removal to a privately operated hospital and placed under the care of private doctors. In the rest of the Counts the plaintiff charges the defendant Utah Fuel Company and its officers and agents for having conspired together and formed a deliberate design and purpose to deprive this plaintiff of his natural rights by and through the formation of a seditious conspiracy continuous and to continue the entire lifetime of the plaintiff and leave a loathsome memory for the hereafter; to do everything necessary to suppress their said theriodies and other crimes suppressed by them; to do and commit every act necessary to carry out their plot so by them formed; to by all means suppress the adminstration of laws and constitutional rights wherever this plaintiff may go; to maliciously prosecute by informations and otherwise and by perjury and subornation of perjury and trial by mob trial and convict this plaintiff for taking his brother from their death bed in front of the municipal bath house at Salt Lake City, Utah, and for filing suit against the defendant, Utah Fuel Company and its co-conspirators; to falsely and maliciously imprison this plaintiff and hold him thus for deportation till they caused him to be deported out of the United States in company of one Christ Zavis, his cousin, and to keep the same in force and operation by all means that money can buy, thereby subjecting this plaintiff to the attacks and insults of all persons having knowledge of their conspiracy or plot; after a period of 24 long years of

malicious and barbaric persecutions they now paid H. Collin Minton, Jr., to go into the United States District Court for the District of New Jersey and move to defeat the ends of justice and the due course of the administration of the laws by said court, in that this plaintiff on the first day of July, 1940, presented to and filed with the Clerk of this Court his application for default judgment against the defendant Utah Fuel Company and Bamberger Coal Company, the Utah Fuel Company owns the entire capital stock and the records show that these corporations are two in name and one in fact, Simon Bamberger was one of its incorporators-owner-President-director and Governor of the State of Utah and Governor of the State Insane Asylum for the Criminal Insane wherein he, Bamberger, want only kept this plaintiff under, barbaric brutalities, starvation, freezing, blows and beatings to force him to submit to life imprisonment therein to suppress the above stated theriodies, therein the said H. Collin Minton, Jr., while the defaults were being pressed against him and others, he moved and stated to the Court that he then say that he represent all those who are not represented by an attorney.

May it please the Court see the Declaration and the Documents of the Record of the pleadings listed on pp. 2-6 (typed record)—in order to cut it short here and save the costs of printing. It has been made a hard struggle for the plaintiff.

Plaintiff was first employed by the Utah Fuel Company in the last part of the year 1907. A short while thereafter he was drafted by the defendant company's Superintendent and General Superintendent and inducted as the defendant's interpreter and directed to take care of all cases of employ, attend all cases of sickness and injuries and assist the company's contract doctor in every case and the

Superintendent in the adjustment of claims of injuries and deaths arising out of or in the course of their employment. Plaintiff was paid the sum of $15.00 per month for his said services. The officials of the defendant, Utah Fuel Co., were working for the company and the injured, sick, and dead had no right to complain. All these grievances have had their recourse on this plaintiff as for his part in the cases. For these reasons plaintiff was compelled to quit the interpreter's job as he was never benefited by it. Accordingly he gave notice to the Officials of the defendant company to the effect that he did not wish to serve the company in that capacity and thereupon he refused to receive his pay statement till the interpreter's pay was taken off. The company superintendent reported the fact to the defendant company and it conducted an inquiry into the case held the same in the main offices at Clear Creek, Utah, and have had with them Mr. Louis Skliris, interpreter general, as investigator. Plaintiff was afraid to give out the true reasons but said that he was not benefited by the job. As a result of this investigation the investigators ordered two months' back pay be added to the plaintiff's statement and be asked to proceed and serve the defendant company. The pay roll clerk added the $30.00 to the statement and asked the plaintiff to kindly sign it and receive it and proceed to help them saying that he wished he had some one to give him $30.00. Plaintiff refused to sign the statement and give notice that he will not sign it at all till the interpreter's pay was taken off. The pay was so taken off and plaintiff refrained from any further activity in that respect up to 1918.

II. JOINDER OF PARTIES DEFENDANT. F. R. 20.

1. Rule 20 of the New Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723 governs the situation. In substance, that provides that joinder of parties defendant is permissible if the claim or claims alleged in an action arise out of a series of transactions or occurrences and there is any question of law or fact common to all of them which will arise in the action. This case does arise out of the same series of occurrences and there are a number of common questions of fact and law in issue. Goddard, D. J. in McNally v. Simons et al., D. C. S. D. N. Y. See pp. 12, 13, and 14. Printed Parts of the Record.

2. Yes, the defendants in the suit were properly joined.

Joint Tort Feasors—May be joint. Brown v. Southern Pacific Co., 31 U. 318, 88 P. 7;

R. S. of Ut. 104-3-13. Id. Defendants. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein;

Fraud.—Of all parties to fraud. White v. Texas Co., 202 P. 826, 59 U. 180;

Criminal.—All guilty. State v. Morgan, 22 U. 162, 61 P. 527; State v. King, 24 U. 482, 68 P. 418;

Cheating of property.—Statute includes real estate as well as personal property. State v. Blake, 105 P. 910, 36 U. 605;

"Torts".—Actions properly joined which arise out of continuous, official acts. Wilson v. Sullivan, 17 U. 341, 53 P. 14;

Several causes of action arising out of injuries with or without force to person and property of either may be joined. Thomas v. Bythe, 44 U. 1, 137 P. 396;

Continuous tortious acts may be combined to avoid multiplicity of suits. Willson v. Sullivan, 17 U. 341, 53 P. 994;

3. Acts which constitute but a single wrong may be commingled even though, if separately stated, different defenses would apply. Reese v. Qualtrough, 48 U. 23, 156 P. 955. In this case the Supreme Court of the State of Utah says:

There is no reason whatever why the complaint should not be held good. Where facts are commingled in a complaint so that, if they were separated, different defenses would apply, or where a defendant might have a good defense to a certain group of facts constituting a cause of action which he does not have to all the facts as they are commingled in the complaint, the courts do not hesitate to require the plaintiff to separate the facts into separate causes of action so as to permit the defendants to intelligently meet all the matters set forth in the complaint. Where, as in this case, however, the wrongful acts complained of are of such a character, and are so numerous and continuous and so blended together, that in legal effect they constitute but a single wrong or transaction, a segregation will not be required. If, under such circumstances, segregation were required, then the acts of each day would have to be stated separately as constituting separate and independent wrongs and causes of action. Please see the case as reported. See also Joint Wrongs. Cooley on Torts, Vol. 1, Ch. V. p. 223, and cases cited thereunder.

4. Perjury and its subornation have been defined and considered as part and parcel of the same offense. 3 Coke

Institutes 167; 2 Bishop Criminal Laws Secs. 1056, 1197. They were treated as such by the Congress in the Act of April 3, 1790, Ch. 9, Sec. 18, 1 Stat. 116. Their separation into two cognate sections in subsequent revisions of this original statute, 18 U. S. C. A. Secs. 231, 232, hardly import a difference in substance. Any general distinction between perpetration and procurement (. . .) no longer obtains. 18 U. S. C. A. Sec. 550. Clark, C. J. in Re United States v. Silverman, C. C. A. Third Circuit, Sept. 7, 1939. 106 F. 2d. 75.

See also the following cases and cases in point:

Ruthenberg v. United States, 245 U. S. 480, 483, 38 S. Ct. 168, 62 L. Ed. 414;

United States v. Bakes, C. C. A. 7th C. 107 F. 2d. 579, (6);

Pon Wing Quong v. U. S., C. C. A. 9th C., April, 1940, 111 F. 2d. 257;

Backun v. United States, C. C. A. 4th C., June 10, 1940, 112 F. 2d. 635;

United Cigar Whelan Stores Corp. et al. v. United States, 113 F. 2d. 340;

United States v. Hodorowicz, C. C. A. 7th C. 105 F. 2d. 218 (7);

Page v. United States, C. C. A. 5th C., 94 F. 2d. 591, (4);

Robinson et al. v. United States, 94 F. 2d. 752, (2), (3), (4);

Schrader v. United States, C. C. A. 8th C., 94 F. 2d. 926 (1);

Alexander v. United States and 3 others, C. C. A. 8th C., 95 F. 2d. 875;

Ginsberg v. United States, C. C. A. 5th C., 96 F. 2d. 433, (13);

What is done and said by co-conspirators in execution of their enterprise is admissible against all. Cr. Code Sec. 332, 18 U. S. C. A. Sec. 550;

Young v. United States, C. C. A. 5th C. 97 F. 2d 200, (1);
Touhy v. United States, C. C. A. 8th C., 88 F. 2d. 930, (16);
Marino et al. v. United States, C. C. A. 9th C., 91 F. 2d. 691.

A Leading Authority under 18 U. S. C. A. 88. See Par's 1 to 31 inclusive and Notes thereunder;
Sutton v. United States, 79 F. 2d. 863;
Wainer et al. v. United States, C. C. A. 7th C., 82 F. 2d. 305.

5. 18 U. S. C. A. Sec. 550. Citation thereon.
Grabboyes v. United States (C. C. A. 3rd C.), 250 Fed. 793;
Nobile v. United States (C. C. A. 3rd C.), 284 Fed. 253;
Marcus v. United States (C. C. A. 3rd C.), 20 Fed. (2d) 454 Cer.
Den. 275 U. S. 565, 72 L. Ed. 429, 48 S. C. R. 122;
Rizzo v. United States (C. C. A. 3rd C.), 275 Fed. 51 (U. S. D. C. N. J. 1918);
"District in which defendant is found". Venner v. Pennsylvania Steel Co. of New Jersey, 250 F. 292.
United States v. Campbell (D. C. Pa. 1910) 179 F. 762;
Gretsch v. United States (N. J. 1917) 242 F. 897, 155 C. C. A. 485, Cer. Den. 38 S. Ct. 12, 245 U. S. 654, 62 L. Ed. 532;
United States v. Jordan (D. C. Pa. 1927), 22 F. (2d) 702, (5) pp. 706-707.

III. JURISDICTION OF SUBJECT MATTER AND OF PARTIES.

"The jurisdiction in civil and criminal matters conferred on the district Courts by the provisions of chapter

3 of Title 8, and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; . . . " Section 729 of Title 28, U. S. C. A. (R. S. Sec. 722). (Pp. 8-9 of printed parts of Record.)

1. Definitions. "In conformity with the Laws of the United States". Words and Phrases, Permanent Edition, Vol. 8, 582, 583, 584.

2. A certificate by a judge that he has discharged a certain duty in "conformity" with the law means that the duty was done "according to the spirit and intent" of the law. Citing: Friend v. Hamill, 34 Md. 298, 303.

3. "In pursuance of", or "in conformity with", or "by virtue of", or "by authority of" the statute, have been held, ... , to import full compliance with the statute. Mr. Justice Harlan in Re School District v. Stone, ... ; See also Bates v. Independent School Dist., 25 F. 192, 195.

4. United States Code Annotated 1941. Cumulative Annual Pocket Part. Laws and Amendments to Nov. 4, 1941. For use during 1942. Title 1, Section 54 (a). Codes and supplements as establishing prima facie the Law. The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included.

5. Revised Statutes and Supplements as Evidence of the Law. Act of June 20, 1874, c. 333, Sec. 2, 18 Stat. 113 provided that the Revised Statutes of the United States in the printed volumes should be legal evidence of the Laws and treaties therein contained, in all the courts of the United States and of the several States and Territories. See also: Act of Mar. 2, 1871, c. 26, 20 Stat. 27; Acts of June 7, 1880, No. 44, 21 Stat. 308; April 9, 1890, c. 73, Sec. 3, 26 Stat. 50.

6. "It is manifest that to constitute a criminal offense under this section (5440), (Read in Sections cited in XII hereunder) the object of the conspiracy must be to commit some offense against the United States; that is, to do some act made a crime by the laws of the United States, . . . on p. 79. And if an act is against the law, it is against the United States, and if against the United States, it is because it is against the laws, and by "laws" is meant "statutory laws."

Parker, District Judge in re Walf (D. C.) 27 Fed. 606-611.

7. (36 C. J.) Law. p. 959. (Sec. 2) B. (Sec. 5.) Federal Law. Law administered in federal Courts. Morris-Turner Live Stock Co. v. Director Gen. of Railroads, 266 Fed. 600, 601. See Fed. Cts. 25 C. J. p. 679.

8. Title 28 U. S. C. A. Section 41, subd. (1) last sentence. The foregoing provisions as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of the section. R. S. 563; Mar. 3, 1875, Sec. 1, 25 Stat. 433; Mar. 3, 1911, c. 231, Sec. 24, 36 Stat. 1091.

9. Subd. (2). Crimes and offenses. Second. Of all crimes and offenses cognizable under the authority of the United

States. (R. S. 563 pars. 1, 2, Sec. 629, pars. 19, 20; Mar. 3, 1875, c. 137, Sec. 1, 18 Stat. 470; Mar. 3, 1887, c. 373, Sec. 1, 24 Stat. 552; Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433; Mar. 3, 1911, C. 231, Sec. 24, par. 2, 36 Stat. 1091. See also Encyclopedia of United States Supreme Court Reports, Vol. 3, pp. 821-822. Civil Rights. R. Civil Actions. Note 28. Civil Jurisdiction of federal courts. Holt v. Indiana Mfg. Co., 176 U. S. 68, 72, 44 L. Ed. 374; Carter v. Greenhow, 144 U. S. 317, 29 L. Ed. 202; Pleasants v. Greenhow, 114 U. S. 323, 29 L. Ed. 204; Civil rights cases, 109 U. S. 3, 12, 27 L. Ed. 835.

10. 28 U. S. C. A. Section 41, subd. (12). Suits Concerning Civil Rights. Twelfth. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Tit. 8. (R. S. 563, par. 11, Sec. 629, par. 17; Mar. 3, 1911, C. 231, Sec. 24, par. 12, 63 Stat. 1092.)

11. 28 U. S. C. A. Sec. 41, subd. (14). Suits to redress deprivation of civil rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any state, of any right, privilege or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. (R. S. 563, par. 12, Sec. 629, par. 16; Mar. 3, 1911, c. 231, Sec. 24, par. 14, 36 Stat. 1092.)

Historical Note. This paragraph merges the jurisdiction which had been vested in the District Court by par. 12 of R. S. 563; . . . "The sum or value of the matter in controversy" is immaterial. See last sentence of subd. (1) of this section.

12. 28 U. S. C. A. Section 41, subd. (17). Suits by Aliens for Torts. Seventeenth. Of all suits brought by any alien for a tort only, in violation of the laws of Nations or of a treaty of the United States. (R. S. Sec. 563, par. 16; Mar. 3, 1911, c. 231, Sec. 24, par. 17, 36 Stat. 1093.) "The sum or value of the matter in controversy" is immaterial. See last sentence of subd. (1) of this section.

Definitions. International Law Digest. Wharton. Washington, Government Printing Office. Vol. 1, Ch. IX.

a. Law of Nations Part of Law of Land. The laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations, or the general doctrines of international law. Talbot v. Seaman, 1 Cranch 1. Even as to a municipal matter the lex fori should be so construed as to conform to the law of nations unless the contrary be expressly prescribed. The Amalia 1 Cranch 1; 4 Dall. 34; Murray v. The Charming Betsy, 2 Cranch 170.

b. An act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, nor should it be construed to violate neutral rights or to affect neutral commerce further than is warranted by the law of nations, as understood in this country. Murray v. The Charming Betsy, 2 Cranch 118.

c. The law of nations is part of the municipal law of Pennsylvania. Rest. v. De Long Champs, 1 Dall., 111.

d. The law of nations should be respected by the federal courts as a part of the law of the land. The Nereide, 9 Cranch. 388.

e. "The law of nations makes an integral part * * * of the laws of the land." Mr. Jefferson, Sec. of State, to Mr. Genet, June 5, 1793, MMS. Notes. For. Leg. Wait's Amm. St. Pap., 30. 1 Am. Pap. F. R. 150.

f. The law of nations is considered as a part of the municipal law of each state. 5 Op. (Appendix), 691, Lincoln, 1802.

g. International law is founded upon natural reason and justice, the opinions of "writers of known wisdom, and the practice of civilized nations". 9 Op. 350. Black, 1859.

13. 28 U. S. C. A. Sec. 41, subd. (23). Suits against trusts, monopolies, and unlawful combinations. Twenty-third. Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies. (Mar. 3, 1911, C. 231, Sec. 24, par. 23, 36 Stat. 1093). Historical Note. "The sum or value of the matter in controversy" is immaterial. See last sentence of subd. (1) of this section.

14. A conspiracy to corruptly obstruct and impede the due administration of justice in a court of the United States in a civil action between private parties in violation of R. S. Sec. 5399 (embodied in Section 241 of Tit. 18) is a conspiracy to commit an offense against the United States within the meaning of R. S. Sec. 5450. Wilder v. United States, 143 F. 433, 74 C. C. A. 567, Writ of Certiorari denied 27 S. Ct. 787, 204 U. S. 674, 51 L. Ed. 674. (See the

several sections of Title 18 and Notes thereunder in the Appendix of this Brief, pp. 3a to 16a, inclusive).

15. Jurisdiction of the United States District Court, District of New Jersey of the case at Bar.

An Action authorized by sections 43 and 47 of Title 8, U. S. C. A. is within federal Court's jurisdiction as based on United States Laws. Mitchell v. Greenough, 100 F. 2nd 184, rehearing denied, 1939, 100 F. 2nd. 1006, and certiorari denied, 1939, 59 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056. (28 U. S. C. A. Sec. 41, subd. (2)).

16. A conspiracy is a partnership in crime, and an overt act of one partner may be the act of all without any new agreement specifically directed to that act. United States v. Socony Vacuum Oil Co. 60 S. Ct. 811, 310 U. S. 150, 84 L. Ed. (18 U. S. C. A. 550.)

If an agreement has an unlawful purpose, it is a conspiracy.

Lynch v. Magnavox Co., 94 F. 2nd. 883. (R. S. of New Jersey. Ch. 119. Conspiracy. 2:119-1).

Any two or more persons who shall combine, unite, confederate, conspire or bind themselves by oath, covenant, agreement, or other alliance:

a. To commit a crime; or

b. Falsely and maliciously to indict another for a crime, or to procure another to be charged or arrested for a crime; or

c. Falsely to institute and maintain any suit; or

d. To cheat and defraud a person of any property by any means which are in themselves criminal; or

e. To cheat and defraud a person of any property by any means which if executed, would amount to a cheat; or

f. To obtain money by false pretenses; g . . .

h. To commit any act for the perversion or obstruction of justice or the due administration of the laws—

Shall be guilty of conspiracy and be liable to the same penalty as persons convicted of a misdemeanor; R. S. of Utah, Ch. 11. Criminal Conspiracy defined. (See pp. 92, 93 of printed Declaration.) (28 U. S. C. A. 725.)

17. Jurisdiction of the Court below to prevent an absolute failure of justice.

When a crime is committed partly in one district and partly in another, it must, in order to prevent an absolute failure of justice, be tried in the district, or in that one which the legislature may designate; and Congress has accordingly provided that when any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either district, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. (R. S. Sec. 731; Mar. 1, 1911, c. 231, Sec. 42; Encyclopedia of United States Supreme Court Reports, Venue, Vol. 11, p. 916; Putnam vs. United States, 143 U. S. 207, 40 L. Ed. 1118; Horner vs. United States, 143 U. S. 207, 214, 36 L. Ed. 126; Benson vs. Henkel, 198 U. S. 1, 49 L. Ed. 919; Hyde vs. Shine, 199 U. S. 62, 76 et seq., 25 S. Ct. 760, 5 L. Ed. 90; Armour Packing Co. vs. United States, 209 U. S. 56; Brown vs. Elliott, p. ....; United States vs. Kissel, 218 U. S. 601. (28 U. S. C. A. 103.)

a. Definitions. The words "offenses against United States" in this said section (103) have the same meaning as the words "offenses against the laws of the United States" in the original Act of March 2, 1867, 14 Stat. 484, c. 169.

b. The words "any offense against the United States" in the section (28 U. S. C. A. 103) have been construed to include any offense made a crime by the laws of the United States. Radin vs. United States, 189 Fed. 568, 111 C. C. A. 6; United States vs. Kissell, 31 S. Ct. 124, 218 U. S. 606, 54 L. Ed. 118.

c. Webster's New Inter. Dictionary. Deal. p. 675. 10. deal with or by: To handle or treat so as to dispose of or manage adequately; as, to deal with a problem. (17 C. J.) p. 1157. Dealt with: Where a consequence follows on an alleged offense being "dealt with", by a competent tribunal; that provision does not only apply when there has been a conviction, it equally applies if the charge is dismissed. Stroud Jud. D. (ct. Exp. Brown, 37 Sol. J. 27.)

d. The language of the Statute is, "shall be deemed to have been committed in either", which means must be deemed, etc. Such is the meaning of the word "shall" given in the following cases by the following authorities:

e. Mr. Justice Waite, in re Ex Parte Jordan, 94 U. S. 248, 24:123. The Court says: The language of the statute is, "shall be allowed," which means "must be allowed" when asked by one who stands in such relation to the cause that he can demand it. And in 25 R. C. L. Statutes, Sec. 15, pp. 768-769. "Shall" ought, undoubtedly to be construed as meaning "must" for the purpose of sustaining

or enforcing an existing right, (West Wisconsin Co. v. Foley, 94 U. S. 160, 24 L. ed. 71) or where a public body is directed to do certain acts. Newton v. Jasper County, 135 Ia. 27, 112 N. W. 167, 124 A. S. R. 256 and Note.

f. Thus, the words "may," "shall be lawful," and the like, frequently are to be construed as "shall" or "must" where the right of the public or of third persons depend on the exercise of the power, or the performance of the duty to which the statute refers. Sec. 15 R. C. L. supra. (U. S. v. Thman, 156 U. S. 353, 15 S. Ct. 378, 39 U. S. L. ed. 450; Ex parte Simonton, 9 Port. (Ala) 390, 33 Am. Dec. 320; Slackpole v. Hallahan, 16 Mont. 40, 40 Pac. 80, 28 L. R. A. 502; Kennelly v. Jersey City, 57 N. J. L. 293, 30 Atl. 531, 26 L. R. A. 281; People v. Brooks, 1 Denio (N. Y. 457, 43 Am. Dec. 704; State v. Kent, 4 N. D. 577, 62 N. W. 631, 27 L. R. A. 686. Notes 6 L. R. A. 162; 12 L. R. A. 355, 356, See Mandamus, Vol. 18, p. 119.

g. "May be dealt with" means must be dealt with. Authorities just above.

h. Thus, in Rex & Regina v. Barlow, 2 Salt. 609.—Where a statute directs the doing of a thing for the sake of justice or the public good, the word "may" is the same as the word "shall," thus, 23 Hen. 8 says the Sheriff may take bail; this is construed he shall, for he is compellable so to do. Mr. Justice Woodbury, in re: Mason et al v. Fearson, 9 How. on p. 258. Citing: Carthew, 293. On this see further, The King v. The Inhabitants of Derby, Skinn, 370; Backwell's case, 1 Vern. 152, 154; 2 Chit. 251; Dwarr Stat. 712; Newburgh T. Co. v. Miller, 5 Johns (N. Y.) Ch. 113; City of New York v. Furze, 3 Hill (N. Y.) 612, 614; Minor et al v. The Mechanics' Bank, 1 Pet. 64. "May" means "must" in all cases where the legislature means to

impose a positive duty. See also State Ex. rel. Greaves v. Henry, Mississippi Sup. Court 5 L. R. A. (N. S.) 340 and Notes 340-341.

Where a word has a judicially settled meaning, it will be presumed that Congress, in using that word in an Act used it in that sense. U. S. v. Merriam, 44 S. Ct. 69, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

As to the judicially settled meaning of the law found in Section 103 of Title 28, U. S. C. A., See:

Continental Illinois Nat. Bank & T. Co. v. Chicago, etc. Co., 55 S. Ct. 23, 293 U. S. 58, 79 L. Ed. 197;

Wilder vs. United States, 27 Sup. Ct. 787, 204 U. S. 674, 51 L. Ed. 674;

Mitchel v. Greenough, 59 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056;

U. S. v. Kissel, 31 Sup. Ct. 124, 126, 218 U. S. 606, 54 L. Ed. 1168;

In re: Palliser, 136 U. S. 257, 262, 10 Sup. Ct. 1034, 34 L. Ed. 514;

Horner v. U. S., 143 U. S. 207, 12 Sup. Ct. 407, 36 L. Ed. 126;

Burton v. U. S. 202 U. S. 344, 381 et seq., 26 Sup. Ct. 688, 50 L. Ed. 1057;

Hyde v. U. S. 225 U. S. 347 et seq.;

Lamar v. U. S. 240 U. S. 60, 36 Sup. Ct. 255, 60 L. Ed. 526;

United States v. Fullheart, quoting from Re Subold, 100 U. S. 871, on p. 895;

Hyde v. Shine, 199 U. S. 62, 25 S. Ct. 760, 5 L. Ed. 90;

Haas v. Henkle, 216 U. S. 462, 30 S. Ct. 249, 54 L. Ed. 569, 17 Ann. cas. 1112;

Grayson v. United States, 272 F. 553;

Grigg v. Bolton, 53 F. (2d) 158;

United States v. Freeman, 239 U. S. 117, 36 S. Ct. 30, 60 L. Ed. 172;

United States v. Alaska Cons. Canneries, 2 F. (2d) 614;
Putnam v. United States, 162 U. S. 687, 708, 16 Sup. Ct. 923, 40 L. Ed. 1118;
Benson v. Henkel, 198 U. S. 1, 25 S. Ct. 569, 49 L. Ed. 219;
United States v. Lombardo, 241 U. S. 73, 77, 36 S. Ct. 508, 510, 60 L. Ed. 597.
There is no exception to be found in the reported cases.

i. A New English Dictionary on Historical Principles, Vol. D. & E. p. 67. 16. To deal with; to act in regard to, administer, handle, dispose in any way of (a thing); b: to handle effectively; to grapple with; to take successful action in regard to.

j. (17 C. J.) p. 1153. Deal as a verb. Citing Wilson v. Delaney, 137 Iowa 636, 638; 113 N. W. 843; on p. 1154—to have to do with. 61. Citing: Montgomery Branch Bank v. Knox, 1 Ala. 148, 151; 11 A. L. R. P. 662, cases quoted in the page.

18. Jurisdiction on constructive presence.

a. There may be a constructive presence in a State, distinct from personal presence, by which a crime committed in another state may be consummated, and render the person consummating it punishable at that place. Hyde vs. United States, 225 U. S. 347; State v. Rodosta, 138 So. 124, 126, 173 La. 623; It may be a constructive presence. Mitchell vs. Commonwealth, 33 Grat. 845, 868; Griminger vs. State, 60 S. W. 583, 87, 44 Tex. Cr. R. 1; State v. Town (Ohio) Wright, 75.

b. It is settled that there may be a constructive presence in a State, distinct from a personal presence, by which a

crime committed in another state "may be consummated and so be punishable there." Grayson vs. United States 272 F. on p. 557 (8); Citing: In re Palliser 136 U. S. 257, 267, 10 S. Ct. 1034, 34 L. Ed. 514; Horner vs. United States, 143 U. S. 207, 12 Sup. Ct. 407, 36 L. Ed. 126; Burton vs. United States, 202 U. S. 344, 381, et seq., 26 S. Ct. 688, 50 L. Ed. 1057, 6 Ann. Cas. 392; Hyde vs. United States, 225 U. S. 347; Lamar vs. United States, 240 U. S. 60, 36 Sup. Ct. 255, 60 L. Ed. 526.

c. By this Court in re: Calahan v. United States, C. C. A. 3rd C. 53 f. (2d) 467. Before Davis, Circuit Court Justice, Clark and Avis, District Court Judges of the Court below.

Avis, District Judge delivered the Opinion of the Court and in part says:

(3) It is claimed that the defendant appellant was not in the district of Delaware at the time the offense was committed, and that, by reason of his being out of the district, he could not be found guilty of the offense charged. The law is quite clear that a person may be convicted of aiding, abetting, and inciting the commission of an offense, even though he may not be in the district when the offense is actually committed, if the court has jurisdiction of the defendant at the time of trial.

This principle is recognized by Congress in section 42 of the Judicial Code (28 U. S. C. A. Sec. 103), as it refers to jurisdiction between the various district courts, and is upheld and applied in the Sup. Court case of Ford v. United States, 273 U. S. 593, 620, 47 S. Ct. 531, 71 L. Ed. 793.

See also Cretsch v. United States, C. C. A. 3rd C. No. 2240, 242 Fed. 897, note 4, p. 899.

As the act in question was done in New Jersey, this was sufficient to give the District Court jurisdiction.

d. The question has been judicially settled by the United States Supreme Court in re: United States vs. Trenton Potteries Co., 273 U. S. 392, 47 S. Ct. 377, 71 L. Ed. 700, 5 A. L. R. 939—Crim. L. 113, 448 (1), 451 (2), 829 (1), 984, 448, 1038 (3), 1168 (1), 1170½ (2).

Mr. Justice Stone delivered the Opinion of the Court and says: (7) "The secretary testified that acting for the association, he effected sales within the district. All of these were overt acts sufficient for jurisdictional requirements."

(e) The question has been also settled by this Court and it is the law of this Court in all cases in point. Vacuum Oil Co. v. Eagle Oil Co., 867, decree affirmed. Eagle Oil Co. of New York v. Vacuum Oil Co., 162 F. 671, 89 C. C. A. 463, certiorari denied, 29 S. Ct. 696, 214 U. 515, 53 L. Ed. 1063. On page 875 of 154 Fed. Rep. this Court says:

> "But while the action is founded upon fraud, it is also of transitory character, and the fact that some of the fraudulent acts were committed outside the jurisdiction of this court and outside of the United States will not avail the defendants. McKenna v. Fisk, 1 How. 241, 247, 248, 11 L. Ed. 117. Mitchel v. Harmony, 13 How. 115, 137, 14 L. Ed. 75; Dennick v. Central R. R. Co., 103 U. S. 11, 18, 26 L. Ed. 43".

19. THE DISTRICT COURT'S JURISDICTION. CLAYTON AND SHERMAN ACTS.

a. Definitions. Transacting Business.—Clayton Anti-Trust Act, Oct. 15, 1914, construed with respect to the dis-

tricts in which suits against corporations for its violation may be brought. Frey & Son v. Cudahy Packing Co., 228 Fed. 209; American Co-operative Serum Ass'n v. Anchor Serum Co., et al. (1941), 38 F. Supp. 313; United States v. Univis Lens Co., Inc., et al., 37 F. Supp. 459; Hansen Packing Co. v. Swift & Co. et al., 27 F. Supp. 364 (8).

The meaning of the phrase "to carry on" when applied to business, is well settled. In Webster's Dictionary the definition is "to prosecute; to help forward; to continue; as to carry on business, etc." Florsheim Bros. Dry Goods Co. v. Lester, 29 S. W. 34, 35, 60 Ark. 120, 27 L. R. A. 505, 46 Am. St. Rep. 162 (citing) Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 5 Sup. Ct. 739, 28 L. Ed. 1137.

b. Law. CONSTRUCTION OF.

In suits under section 7 of the Sherman Anti Trust Act (15 U. S. C. A. Sec. 15, note), the word "found" came to mean "doing a business" to a substantial extent. Knox, J., in re Hansen Packing Co. v. Armour & Company, 16 F. Supp. 784. Citing: Peoples Tobacco Co. v. American Tobacco Company, 246 U. S. 79, 87, 38 S. Ct. 233, 62 L. Ed. 597, Ann. Cas. 1918C, 537; Katz Drug Co. v. Shaeffer Penn Company, 6 F. Supp. 210.

c. Section 22 of Title 15, U. S. C. A. is a venue statute which enables a complainant to file his suit in any district wherein the defendant resides, or found or where it "transacts business". Upon the theory that the defendant Utah Fuel Company is a citizen and resident of the State of New Jersey, residing at the city of Jersey City, New Jersey where it was found or where it transacts its business, or from wherein it transacts its business throughout the United States, the suit was filed here.

Under such circumstances the venue would be fixed here. Jeffery-Nichols Motor Co. v. Hupp Motor Corp., 46 F. (2nd) 623; Eastman Kodak Co. v. Southern Photo Materials Co., 273 U. S. 359, 47 S. Ct. 400, 71 L. Ed. 684.

d. (4) (From the Katz Drug Co. cas. supra.) Said statute, however, provides that all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. In this case it is unquestionable that the Utah Fuel Company is an inhabitant of the State of New Jersey and it is found there transacting its business throughout the United States. It is also unquestionable that it is found, it is transacting its business, and it has been and is operating the conspiracy in question in the State of Utah, as well as in several other states of the United States. (28 U. S. C. A. Secs. 103, 725; 15 U. S. C. A. Secs. 1, 2, 3; 18 U. S. C. A. Secs. 52, 54, 88, 231, 232 et seq. See the sections in the appendix pp. 3a et seq.; Clark, C. J., II, 4 supra; Avis, D. J., re Calahan vs. United States, II, 18, c.)

e. Facts. The defendant Utah Fuel Company is a powerful corporation and owns entire capital stock of (a) Calumet Fuel Co.; (b) Wasatch Store Co.; (c) Castle Gate Coal, Coke & Fuel Co.; (d) Bamberger Coal Co., and (e) Utah Grazing Lands Co.; stock owned jointly by Western Pacific R. R. Co. and Missouri Pacific R. R. Co. The Rio Grande Western (D. & R. G. R. R. Co.) was the operator; occupied the same offices; had the same paymaster; employed the same section gangs and deducted from every Greek employed by the Railroad Cos. $1.00 every month "to have and to hold" the job. Thus the spoils taken in provide the resources with which they do away with complainants.

f. LAW. CIVIL RIGHTS ACTS CONSTRUED. C. C. A. 3rd. C.

As we have seen, the suit involves the deprivation of civil rights. R. S. Secs. 1979 and 1980, 8 U. S. C. A. Secs. 43, 47, give to the individuals thus deprived a right of action at law. Irrespective of these statutes, however, a right of action in the individual for damages for loss of political rights existed at common law. Nixon v. Herndon, 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759. Such an action sounds in tort and the jury may award exemplary or punitive damages. Barry v. Admonds, 116 U. S. 550, 6 S. Ct. 501, 29 L. Ed. 729; Wiley v. Sinkler, 179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84. In such an action the jurisdictional sum is to be determined by the amount claimed by the plaintiff in his complaint or declaration, Hulsecamp v. Teel, Fed. Case, No. 6862, 2 Dall. 358, 1 L. Ed. 414; Wiley v. Sinkler, Supra, including an amount claimed by way of punitive damages. Ragsdelle v. Rudich, 5 Cir., 293 F. 182, unless it appears from the complaint or declaration that it is not possible for the plaintiff to recover the amount claimed or that the amount is claimed fraudulently in order to create jurisdiction in the court. Smithers v. Smith, 204 U. S. 632, 27 S. Ct. 297, 51 L. Ed. 656. BIGGS, C. J. RE: HAGUE V. COMMITTEE OF INDUSTRIAL ORGANIZATION. 101 F. 2nd, 774. (Ruling on Motions Nos. 1 and 3.)

8. LAW. CIVIL RIGHTS ACTS CONSTRUED. UNITED STATES SUPREME COURT.

HAGUE V. COMMITTEE OF INDUSTRIAL ORGANIZATION, 307 U. S. on p. 968.

Same case (f) supra, on writ of Certiorari. 307 U. S. 495, et seq. 83 L. Ed. 1532. Mr. Justice Roberts delivered an opinion in which Mr. Justice Black concurred:

(27) The Supreme Court says: The right to maintain the present suit is conferred upon the individual respondents by the due process clause and Acts of Congress, regardless of their citizenship and of the amount in controversy. Section 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13, provided, that "any person who, under color of any law, statute, ordinance * * * of any state, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges or immunities secured by the Constitution of the United States, shall * * * be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress". And it directed that such proceedings should be prosecuted in the several district or circuit courts of the United States. The right of action given by this section was later specifically limited to "any citizen of the United States or other person within the jurisdiction thereof," and was

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extended to include rights, privileges and immunities secured by the laws of the United States as well as by the Constitution. As thus modified the provision was continued as sect. 1979 of the Revised Statute and now constitutes sec. 43 of Title 8 of the United States Code, 8 U. S. C. A. Sec. 43.

It will be observed that the cause of action, given by the section in its original as well as its final form, stands broadly to deprivation by state action of the rights, privileges and immunities secured to persons by the Constitution. It thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. It will also be observed that they are those rights secured to

persons, whether citizens of the United States or not, to whom the Amendment in terms extends the benefit of the due process and equal protection clause.

Meanwhile, the provisions conferring jurisdiction on district and circuit courts over suits brought under sec. 1 of Civil Rights Act of 1871 were continued as Rev. Statute Secs. 568 and 629, and now appear as Sec. 24 (14) of the Judicial Code, 28 U. S. C. A. Sec. 41 (14). The Act of March 3, 1911, 36 Stat. at L. 1087, 1091 amended Sec. 24 (1) of the Judicial Code so as to direct that "The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of the section." Thus, *(529) *since 1875, the jurisdictional acts have contained two parallel provisions, one conferring jurisdiction on the federal courts, district or circuit, to entertain suits "arising under the constitution or laws of the United States" in which the amount in controversy exceeds a specified value; the other, now Sec. 24 (14) of the Judicial Code, conferring jurisdiction on those courts of suits authorized by the Civil Rights Act of 1871, regardless of the amount in controversy.

Since all of the suits authorized are suits arising under a statute of the United States to redress deprivation of rights, privileges and immunities secured by the Constitution, all are literally suits "arising under the Constitution or the laws of the United States". But it does not follow that in every such suit the plaintiff is required by Sec. 24 (1) of the Judicial Code to allege and prove that the constitutional immunity which he seeks to vindicate has a value in excess of $3,000. There are many rights and immunities secured by the Constitution, of which freedom of speech and assembly are conspicuous examples, which are not capable of money valuation, and in many

instances, like the present, no suit in equity could be maintained for their protection if proof of the jurisdictional amount were prerequisite. We can hardly suppose that Congress, having in the broad terms of the Civil Rights Act of 1871 vested in all persons within the jurisdiction of the United States a right of action in equity for the deprivation of constitutional immunities cognizable only in the federal courts, intended by the act of 1875 to destroy those rights of action by withholding from the courts of the United States jurisdiction to entertain them.

That such was not the purpose of the Act of 1875 in extending the jurisdiction of the federal courts to causes of action arising under the Constitution or laws of the United States involving a specified jurisdictional amount, is evident from the continuance upon the statute books of *Sec. 24 (14) side by side with 24 (1) of the Judicial Code, as amended by the Act of 1875. Since the two provisions stand and must be read together, it is obvious that neither is to be interpreted as abolishing the other, especially when it is remembered that the 1911 amendment of section 24 (1) provided that the requirement of a jurisdictional amount should not be construed to apply to cases mentioned in Sec. 24 (14). Thus must be taken as legislative recognition that there are suits authorized by sec. 1 of the Act of 1871 which could be brought under Sec. 24 (4) after, as well as before, the amendment of 1875 without compliance with any requirement of jurisdictional amount, and that these at least must be deemed to include suits in which the subject matter is one incapable of valuation. Otherwise we should be forced to reach the absurd conclusion that Sec. 24 (14) is meaningless and that a large proportion of the suits authorized by the Civil Rights Act cannot be maintained in any court, although jurisdiction of them, with no requirement of jurisdictional amount, was

carefully preserved by Sec. 24 (14) of the Judicial Code and by the 1911 amendment of Sec. 24 (1). By treating Sec. 24 (14) as conferring federal jurisdiction of suits brought under the Act of 1871 in which the right asserted is inherently incapable of pecuniary valuation, we harmonize the two parallel provisions of the judicial code, construe neither as superfluous, and give to each a scope in conformity with its history and manifest purpose. The practical construction which has been given to the two jurisdictional provisions established that the jurisdiction conferred by Sec. 24 (14) has been preserved to the extent indicated.

The conclusion seems inescapable that the right conferred by the Act of 1871 to maintain a suit in equity in the federal Courts to protect the suitor against a deprivation of rights or immunities secured by the Constitution, has been preserved, and that whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights there *is jurisdiction in the district court under Sec. 24 (14) of the Judicial Code to entertain it without proof that the amount in controversy exceeds $3,000. As the right is secured to "any person" by the due process clause, and as the statute permits the suit to be brought by "any person" as well as by a citizen, it is certain that resort to the privileges and immunities clause would not support the decree which we now sustain. . . . (Re: Ruling on Motions Nos. 1 and 3.)

Plaintiff's Note. The Decision construing the subd. (14) of Sec. 41 of Title 28 U. S. C. A. applies to and governs subds. (2), (12), (17), and (23) of said Title and Section. (See pars. 8, 9, 10, 11, 12, 13 of III supra.) (RULINGS ON MOTIONS 1, 2, 3, 4, AS TO DEFENDANT MINTON, ARE NULL AND VOID.)

IV. CRIMINAL LAWS OF UNITED STATES APPLY TO ALL CONSPIRACIES THAT AFFECT PRIVATE RIGHTS. (18 U. S. C. A., 52 et. seq. See Appendix.)

The offenses denounced by the Criminal Statutes of the United States are not confined to such acts as injure the United States, but apply as well to all conspiracies that affect private rights or interests where they are under the protection of the criminal laws of the United States, as to the right and interests of the government itself. ('Cyc.) p. 628, 5; U. S. v. Sanch, 7 Fed. 715. See also Notes under Section 88 U. S. C. A. 18 in the Appendix. (Motions Nos. 1, 2, 3, 4.) (Motion No. 4 as to Dfnt. H. Collin Minton, Jr.)

V. THE FEDERAL COURTS CANNOT ABANDON THEIR JURISDICTION PROPERLY OBTAINED OF A SUIT.

The Federal Courts cannot abandon their jurisdiction already properly obtained of a suit. The Courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. Snydam v. Broadnax, 14 Pet. 67; Union Bank v. Jolly's Administrators, 18 How. 503. Where a case is made upon a bill which is within the jurisdiction of the Court of the United States the court is bound to maintain such action and proceed to trial. The law should and ought to be enforced as against all.

The existence of the Jurisdiction creates an implication of duty to exercise it. That the judges of the United States shall be bound by the Constitution of the United States

and the Acts of Congress of the United States and the Judicial Authority shall be exercised pursuant to the provision of the Constitution of the United States, the Acts of Congress of the United States and the Common Law. United States Supreme Court re McCleland v. Garland, 217 U. S. 268.

VI. LAWS OF STATES AS RULES OF DECISIONS. (R. S. of Utah, 1933.)

Title 42. Industrial Commission. Workmen's Compensation.

See and read in pp. 44, 45, 46, 47, 48, and 49 of the Printed Declaration or Complaint. See Annotations of Ruling Case Law of or construing the said Industrial Act, pp. 49, 50, 51, 52. Other Jurisdictions see pp. 52, 53, and 54. 725 U. S. C. A. 28, see page 54 Printed Declaration. Flementis case, see p. 55; Sullivan case, see p. 56. Moffat, J.; Findings supported by any substantial competent evidence are conclusive. Supreme Court of the State of Utah. See citations pp. 57, 58 of Printed Declaration; Utah Fuel Company vs. Ind. Com. see p. 59 Printed Declaration. Master and Servant. R. S. of Ut. Title 49, p. 60, 61; other cases pp. 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76; of Declaration; (71 C. J.) See p. 77 of Declaration; Other cases see pp. 78, 79, 80, 81; Utah Fuel Co. v. Ind. Comm. See page 81; other cases 82, 83, 84, 85 (S. Ct. of Ut.) 86, 87, 88 (S. Ct. Idaho); other cases p. 89; R. S. of Utah. Title 49. Vice Principal; Title 103, Penal Code, Ch. 1, page 90, Definitions; Several Sections of the Constitution of the State of Utah, page 91, page 92; R. S. of Ut. Ch. 11. Conspiracy. Criminal Conspiracy defined,

p. 92; West Virginia Supreme Court, pp. 93 to 97; Tony Flementis case against the doctors and hospital of the defendant Utah Fuel Company, pp. 98 to 108; certification, p. 108; other sections of R. S. of Ut. pp. 108, 109.

VII. EXCLUSIVE JURISDICTION OF UNITED STATES COURTS.

The law found in this section (28 U. S. C. A. 371) is very clear and provides: The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States. First: Of all crimes and offenses cognizable under the authority of the United States. See the section. No state court can do a thing with the plot or conspiracy and as such it forced martyric sufferings upon this plaintiff. In one case in the District Court of Bergen County, Hackensack, N. J., plaintiff sued three brothers who were trading under the style and title Collis Brothers for wages due and unpaid, about $280.00. The matter came on to be heard and tried before Judge James White and plaintiff asked Judge White to allow him to examine one of the Collis Brothers, James. Judge White answered: Do not put him on the stand, for if you do I will dismiss your case. Plaintiff answered: No! I sooner not. Judge White then gave judgment for the full amount for which plaintiff sued. The Collis Brothers plotted to defraud the wages the same as the defendants Pappas, Rosenkrans et als., at Paterson, N. J. The defendant Pappas, Nicholas J., came there and talked them over and then came into the kitchen and said hello to the plaintiff, but Judge White knew all of these and gave judgment in the case and in

the Case of Curtis vs. Candaras which case went also before him. It follows that for like reasons it is the duty of the federal Courts to do justice in the case according to the right and justice and the laws of the United States.

VIII. WRITS AND PROCESS. POWER TO ISSUE WRITS FOR THE EXERCISE OF JURISDICTION. 28 U. S. C. A. Sec. 377 (Judicial Code, Sec. 262).

The Supreme Court, the Circuit Court of Appeals, and the District Courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (R. S. 716; Mar. 3, 1911, c. 231, Sec. 262, 36 Stat. 1162).

a. Definition. The section was enacted by Congress in order to meet cases where there is no specific process provided by statute. John Gund Brewing Co. v. U. S., 206 Fed. .....

b. DECISION OF THE U. S. SUP. COURT ON THE SUBJECT.

See re. United States vs. Fullheart, 47 F. 802, quoted from re: Subold, 100 U. S. 871, on p. 895.

We hold it to be an incontrovertible principle, that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent.

This power to enforce its laws and to execute its functions in all places does not derogate from the power of the state to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time. In that case, the words of the Constitution itself show which is to yield.

"This Constitution, and all laws which shall be made in pursuance thereof, . . . shall be the supreme law of the land."

It (the U. S.) must exercise its powers, or it is no government. It must execute them on the land as well as on the sea, on things as well as persons. And to do this it must necessarily have power to command obedience, preserve order, and keep the peace, and no person or power in this land has the right to resist or question its authority so long as it keeps within the bounds of its jurisdiction.

c. 28 U. S. C. A. 729. "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of chapter 3 of Title 8, and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; . . ." (see III. 1 to 8 et seq. to par. 19 to Decision of Justice Roberts, inclusive) (pp. 8, 9, et seq. printed parts of the Record in this Court).

d. In the case before the court the jurisdiction of the court below is to be exercised and enforced in "conformity with the Laws of the United States" invoked by the plaintiff which laws are cited and set out in: I, II, III, IV, V, VI, VII, IX, X, XI, XII a. Secs. of Cr. Code. We have

before us then all these said laws to proceed with against the conspirator-defendants.

IX. DISTRICT COURT CANNOT REFUSE TO ISSUE WRITS NECESSARY FOR THE EXERCISE OF ITS JURISDICTION.

a. Paragraph b. VIII is repeated here. 28 U. S. C. A. 103, was made or enacted to take care of this case before the court, as well as all other and further cases similar in nature and character.

b. The right, jurisdiction, power and authority to exercise federal jurisdiction over cases coming within the meaning of the provisions of 28 U. S. C. A. 103, carries with it the right, power and authority to issue and serve writs of summonses to compel appearances by the persons committing the offenses making up the conspiracy.

c. The jurisdiction of the subds. cited in IX is exclusive and the District Court cannot refuse to issue writs necessary to carry their jurisdiction into effect. (III. 8, 9, 10, 11, 12, and 13, supra.)

X. EVIDENCE. (8 U. S. C. A. 41.)

Constitution of the State of Utah. See p. 91 Declaration. (725 U. S. C. A. 28.) (28 U. S. C. A. Sections 687, 688 and 695) (XIV Infra).

XI. JURISDICTION UNDER THE SHERMAN AND CLAYTON ACTS.

The exercise of the power conferred upon the courts by the Constitution and the Acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the Courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded. It is the duty of the court below to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein.

Hence, in every suit in which the power to acquire jurisdiction of the subject-matter and of the parties is conferred upon the court, the duty is imposed upon it, if its discharge is invoked by the complainant, to summon and hear, before decision, not only every indispensable party, but every necessary party within reach of its process, every party who has an interest in the controversy, and who ought to be made a party to the suit in order that the court may finally adjudicate the whole matter, although if he were not amenable to process, final justice might be administered between the other parties without his presence. Sanborn, VanDevanter, Hook and Adams, in re: U. S. v. Standard Oil Co., supra. Citing: Story's Eq. Pl.; Shields v. Barrow, 17 How. 130, 15 L. Ed. 158; Minnesota v. Northern Securities Co., 185 U. S. 199, 255, 22 Sup. Ct. 308, 46 L. Ed. 499.

b. Exclusiveness. The jurisdiction of the District Courts to entertain suits to enjoin violation of the Sherman Anti-Trust Act or the Clayton Act is exclusive, and the state

Courts have no jurisdiction in such cases. Hughes Federal Practice, Sec. 1714. Citing: General Investment Co. v. Lake Shore & M. S. Ry. Co., 260 U. S. 261, 43 S. Ct. 106, 67 L. Ed. 244.

c. Materiality of Amount in Controversy.

The sum or value in controversy is immaterial to the jurisdiction of the District Courts in suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies. (28 U. S. C. A. Sec. 41(1), Jud. Code, Sec. 24(1) last sentence; 15 U. S. C. A. Sec. 15; Hughes Fed. Pr. Sec. 1775.)

XII. JURISDICTION UNDER CIVIL RIGHTS ACTS.

The plaintiff in the suit predicated jurisdiction upon the causes of actions which he alleges in his Declaration under legislation enacted during the reconstruction period (Act of April 20, 1871, Ch. 22, Secs. 1, 2, 17 Stat. 13), and now embodied in the United States Code (8 U. S. C. A. Secs. 43, 47). The latter section (47) expressly authorizes an action for the recovery of damages. Such an action, unless the claim made is purely colorable, is an action based upon the laws of the United States as to which the Federal Courts have jurisdiction. Wilbur, Circuit Judge, in re Mitchell v. Greenough, 100 F. (2d) 184. Citing: Sullivan v. Felix, 5 Cri., 194 F. 88, Id. Affirmed, 233 U. S. 318, 34 S. Ct. 596, 58 L. Ed. 980; McClaine v. Rankin, 197 U. S. 154, 25 Sup. Ct. 410, 49 L. Ed. 702, 3 Ann. Cas. 500; Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 277. See the Reported case Campbellsville Lumber Co. v. Hubbert, 112 F. 718, 50 C. C. A.

435, judgment affirmed Hubbert v. Campbellsville Co., 24 S. Ct. 28, 191 U. S. 70, 48 L. Ed. 101.

b. That the claims made and set forth in the Declaration are not purely colorable see XV hereunder. Also the several sections of 18 U. S. C. A. cited in this section. As for Evidence to sustain every clause of the Declaration see the Photostated and Typed Exhibits Certified to this Court by the Clerk of the Court below.

c. The crimes and offenses defined in Title 18, United States Code, are cognizable in the District Courts of the United States (18 U. S. C. A. Sec. 546. (Cri. Code, Sec. 340.) Hughes Federal Practice, Section 6521.

XIII. FEDERAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES.

These rules govern the procedure in the District Courts of the United States in all suits of civil nature whether cognizable as cases at law or in equity. They are intended to secure the just, speedy, and inexpensive determination of every action. Rule 1. See page 9 of the Printed Parts of the Record. As to meritorious defenses interposed by the plaintiff under the Federal Rules see pages 10 et seq. of the Printed Parts of the Record.

XIV. EVIDENCE. ACTS, DECLARATIONS AND THE RECORDS OF THE COURTS AND JUDICIAL PROCEEDINGS CONCLUSIVE PROOF.

1. Supreme Court Encyclopedia C. p. 1102. Responsibility of conspirators for acts of co-conspirators.

In a conspiracy every act of one of the conspirators in furtherance of the common design is in contemplation of law the act of all. Act of one Act of All, United States vs. Gooding, 12 Wheat 466, 469, 6 L. Ed. 993; Lincoln vs. Claflin, 7 Walls 132, 138, 19 L. Ed. 106; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; Logan vs. United States, 144 U. S. 263, 309, 36 L. Ed. 429; Brown vs. United States, 150 U. S. 93, 98, 37 L. Ed. 1010; Boyd vs. United States, 142 U. S. 540, 455, 35 L. Ed. 1076.

2. Encyclopedia of United States Supreme Court. Reports Vol. 3, 1108. Conspiracy, C. Who Liable.—Prearrangement is not essential to a recovery against one of several conspirators. It is sufficient to show that he subsequently, with knowledge of the conspiracy became a party to it. His subsequent participation in the conspiracy and its fruits is as effective to charge him as if he had been a party to it originally. Lincoln vs. Claflin, 7 Wall, 132, 19 L. Ed. 106.

3. IV. Evidence. A

Acts and Declarations of one as evidence against the others.—In case of conspiracy when once the conspiracy or combination is established, the act of one conspirator, in the prosecution of the enterprise, is considered the act of all. Each is deemed to consent to, or command, what is done by any other, in furtherance of the common object.

American Fur Co. vs. United States, 2 Reb. 358, 365, 7 L. Ed. 450; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; United States vs. Gooding, 12 Wheat, 460, 469, 6 L. Ed. 693; Logan vs. United States, 144 U. S. 263, 309, 36 L. Ed. 429; Brown vs. United States, 150 U. S. 93, 98, 39 L. Ed. 1010; Bannon vs. United States, 166 U. S. 464, 469, 39 L. Ed. 494; Clune vs. United States, 159 U. S. 590, 593, 4 L. Ed. 269; Connecticut Mut. Life Ins. Co. vs. Hullmon, 188 U. S. 208, 218, 47 L. Ed. 446; Lincoln vs. Claflin, 7 Wall, 132, 19 L. Ed.

Sup. Ct. Encyc. Officers and Agents of Private Corporations.

4. IX. Liability of Corporation for Acts of Agents and Rights Thereunder.

As to corporations necessarily act by agents, a corporation is liable for the acts of its servants while engaged in the business of their employment, to the same extent that individuals are liable under like circumstances. 21. Orleans vs. Platt, 99 U. S. 676, 682, 25 L. Ed. 404; Philadelphia, etc. R. Co. vs. Quigley, 21 How. 202, 209, 16 L. Ed. 73; Baldwin vs. Bank, 1 Wall, 234, 240, 17 L. Ed. 534. Railroad Co. vs. Howard, 7 Wall, 392, 413, 19 L. Ed. 117.

5. The officers of a corporation are held out to the public as having authority to act according to the general usage, practice and course of their business, would, in general, bind the corporation in favor of third persons possessing no other knowledge. Minor vs. Mechanic Bank, 1 Pet. 46, 7 L. Ed. 47. "The acts of a single duly authorized agent of a corporation, bind the corporation although he keeps no minutes of such acts. They may be, and they are, daily, proved ? ." United States Bank vs. Dandridge, 12 Wheat 64, 83, 6 L. Ed. 552.

6. "The officer is the corporation for many purposes." Pollard vs. Minton, 105 U. S. 7, 12; 26 L. Ed. 998. Sup. Ct. Encyc., p. 965.

7. VI. A 5. Ratification and Estoppel to Deny Authority.—And it is settled law that the existence of the requisite authority in subordinate officers may, in the absence of express statutory prohibition, be shown otherwise than by the official record of the proceedings of the board. It may be established by proof of the course of business between the parties themselves; by the usages and practice which the company may have permitted to grow up in its business; and by the knowledge which the board charged with the duty of controlling and conducting the transaction and property of the corporation, had, or must be presumed to have had, of the acts and doings of its subordinates in and about the affairs of the corporation. Mining Co. vs. Anglo-California Bank, 104 U. S. 192, 194, 26 L. Ed. 707.

8. Where the officer was held out to the world as competent to do what he did, and it was done in conformity to the established usage of the company in all such cases, under such circumstances, the institution cannot be permitted to deny that he had all such powers as he habitually exercised, and thus assumed to have. Cresswell vs. Lanahan, 101 U. S. 347, 351, 25 L. Ed. 853; Merchants Bank vs. State Bank, 10 Wall, 604, 19 L. Ed. 1008; Hubard vs. Todd, 171 U. S. 474, 496, 43 L. Ed. 246; Putnam vs. United States, 162 U. S. 687, 713, 40 L. Ed. 1118.

XV. JUDICIAL NOTICE 28 U. S. C. A. 695, 687, 688. UNITED STATES CODE ANNO.

a. Title 28, Sec. 687. *Authentication of legislative acts; proof of judicial proceedings of States.*

The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the Courts of any State or Territory, or any such country, shall be proved or admitted in any other Court within the United States, by the attestation of the Clerk, and the seal of the Court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form.

And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from which they are taken. (R. S. Sec. 905; Act Mar. 27, 1804, c. 56, Sec. 2, 2 Stat. 299.)

b. U. S. C., Title 28, Ch. 19—*Evidence.* Sec. 695. *Writings and Records Made in Regular Course of Business.*

In any Court of the United States or in any Court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction or occurrences, or event, if it shall appear that it was the

regular course of such business to make such memorandum or record at the time such act, transaction, occurrences or event or within a reasonable time thereafter.

The term "business" shall include business, profession, occupation, and calling of every kind. (June 20, 1936, C. 640, Sec. 1, 49 Stat. 1561.)

c. U. S. C. A. Title 28, Sec. 688. *Proofs of records in offices not pertaining to Courts.*

All records and exemplifications of books which may be kept in any public office of any State or Territory, . . . not appertaining to a Court, shall be proved or admitted in any Court or office in any other State or Territory, . . . by the attestation of the keeper of the said records or book, and the seal of his office annexed, . . . or keeper of the great seal of the State, or Territory or country, that the said attestation is in due form, and by the proper officer. . . . And that the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every Court and office within the United States as they have by law or usage in the Courts or offices of the State, Territory, or country as aforesaid, from which they are taken. (R. S. Sec. 906.)

XVI. THE PROCESS OF THE COURT BELOW.

We have, 28 U. S. C. A. 729, commanding the District Court of the United States for the District of New Jersey, thus:

a. "The jurisdiction in civil and criminal matters conferred upon you by the provisions of chapter 3 of Title 8,

and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and inforced by you in conformity with the laws of the United States, in so far as such laws are suitable to carry the same into effect; . . .

b. 28 U. S. C. A. 103, is a law of the United States. Origin of the Section. This said section was a part of the same section which defined conspiracy. Hyde vs. United States, 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114. The section. THIRTY-NINTH CONGRESS. SESS. II. CHAP. CLXIX (169), SECTION 30 on page 484:

And be it further enacted. That if two or more persons conspire either to commit any offense against the laws of the United States, or to defraud the United States in any manner whatever, and one or more of said parties to said conspiracy shall do any act to effect the object thereof, the parties to said conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not exceeding two years. And when any offense shall begin in one judicial district of the United States and completed in another, every such offense shall be deemed to have been committed in either of the said districts, and may be dealt with, inquired of, tried, determined and punished in either of said districts, in the same manner as if it had been actually and wholly committed therein.

2. 8 U. S. C. A. 41, 43, 47. For the Text of Sections 41 and 43 see them in the Appendix 3a. For the Text of Section 47 see p. 82 and part of p. 83 of the Typed Record. For the present Text of Section 103 of Title 28 U. S. C. A. see it on p. 68 of the typed Record of pleadings. 8 U. S.

C. A. 41, and 729 U. S. C. A. 28, see page 70 Typed Record of Pleadings.

3. District Courts. Jurisdiction of suits against trusts, conspiracies, monopolies, and unlawful combinations. Hughes Fed. Pr. Sec. 1776. See page 75 of typed Record of Pleadings.

4. The place of trial could be any state and district where an overt act was performed. Brown v. Elliot, 225 U. S. 136. The venue of his trial is made by the criminal himself. Brown v. Elliot. See page 76 typed Record of Pleadings.

5. There is no principle of Constitutional Law which entitled one to be sued for a criminal offense in the district where he resides. Haas v. Henkel. See page 77 typed Record of Pleadings. Venue. See page 79 of the Record of Pleadings.

6. Jurisdiction of District Courts. The crimes and offenses defined in this title shall be cognizable in the District Courts of the United States, as prescribed in section 41 of Title 28 (Mar. 4, 1909, c. 321, Sec. 340, 35 Stat. 1153); Hopkins New Fed. Penal Code, Sec. 546 (Cri. Code, sec. 340). (28 U. S. C. A. 729.) (R. S. of New Jersey. 2:12-2. Gen. Jurisdiction to make and Continue Process.) (28 U. S. C. A. 725, 729.)

7. The overt act.—Defined. Is an act done in furtherance of the object of the conspiracy. U. S. v. Cassidy, 67 Fed. (2d) 712,714. (H. N. Fed. Pr. Penal L.)

8. By whom committed. The act of one conspirator in furtherance of the common design is the act of all. U. S.

v. Olmstead, 5 Fed. 2d. (2d.) 712, 714 (cases collected); Morrow v. U. S., 11 F. (2d) 256, 259, C. C. A. (cases collected). (H. N. Fed. Pen. Code.)

9. But one necessary. Only one overt act need be established. U. S. v. Olmstead, 5 F. (2nd) 712, 715 (cases collected).

OVERT ACT. HOW PLEADED. FORM 875 et seq. Allegations of. Form 809, et seq. H. N. Fed Pr.

10. Venue. Is the place of formation of the conspiracy, or the place of commission of an overt act. Hyde v. U. S. 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114.

Hop. N. Fed. Pen. C. p. 17.

11. Conspiracy.—That the venue may be laid in any district where an overt act has been committed (cases collected in Morris v. U. S. 7 Fed. 2d. 785, 789, C. C. A. 8) has at times given the Government a wide range of choice as to the place of trial, exercised in at least one instance by bringing defendants residing a long distance from the place of trial to be tried in a strong Ku Klux Klan district. (Lucking v. U. S. 14 Fed. 2nd. 881—statement of facts). Again a shrewd practice which might be open to criticism, but fully warranted by the legal principles that the overt act of one conspirator is the act of all the conspirators (U. S. v. Rabinowich, 238 U. S. 78, 35 S. Ct. 682, 684, 59 L. Ed. 1211, and cases collected in Morris v. U. S., 7 Fed. (2nd) 785, 789. (C. C. A. 8.)

12. Construction of Federal Penal and Criminal Laws: rules as to strict construction.—Penal statutes are to be construed strictly (U. S. v. Wiltberger, 5 Wheaton 76, 5 L. Ed. 37) but not so strictly as to defeat the obvious

intention of the legislature (U. S. v. Morris, 14 Pet. 464, 10 L. Ed. 543).

13. The intention of such statute must be found in language actually employed, interpreted according to its fair and obvious meaning (U. S. v. Haris, 177 U. S. 305, 20 S. Ct. 609, 44 L. Ed. 780. Pars. 9 to 13. See Hopkin's New Federal Practice.)

14. "Pleading the statute" is stating the facts which bring the case within it, and "counting" on it is making express reference to it by apt terms to show the source of right relied on. Atlantic Coast Line R. Co. v. State, 74 So. 595, 599, 73 Fla. 609 (b. p. 3 Declaration.) (28 U. S. C. A. 41, subds. entered; 103, 725, 729; 8 U. S. C. A. 41, 43, 47; 15 U. S. C. A. 1 to 7, 15, 22, 24, 26).

15. Pleading the statute is stating the facts which bring the case within it. Cullough v. Colfax County, Neb., 95 N. W. 29, 37.

16. The rule is now well settled that prosecution for conspiracy may be maintained either in the district in which the conspiracy was entered into or in any district in which an act was done to effect the object of the conspiracy". Hyde vs. Shine, 199 U. S. 62, et seq., 25 S. Ct. 760, 5 L. Ed. 90 and about 15 other S. Ct. cases. Note 13 under section 103 U. S. C. A. 28. (729 U. S. C. A. Title 28). Venue. Encyclopedia of United States Supreme Court Reports, Vol. 11, p. 916. (See III—Par. 17.) (28 U. S. C. A. 103, 729.)

17. In a conspiracy every act of one of the conspirators in furtherance of the common design is in contemplation

of law the act of all. Act of one Act of All. United States vs. Gooding, 12 Wheat 466, 469, 6 L. Ed. 993; Lincoln vs. Claflin, 7 Wall. 132, 138, 19 L. Ed. 106; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; Logan vs. United States, 144 U. S. 263, 309, 36 L. Ed. 429; Brown vs. United States, 150 U. S. 540, 455, 35 L. Ed. 1076. S. Ct. Encyc. C. p. 1102. Responsibility of conspirators for acts of co-conspirators. (8 U. S. C. A. 47; 28 U. S. C. A. 103; 15 U. S. C. A. 1 to 7, 15, 22, 24, 26.) (28 U. S. C. A. 729.)

18. The alleged conspiracy is one. Its scheme is single; it has but one Object (Sanborn, VanDevanter, Hook, and Adams, C. J. supra). The defendant Utah Fuel Company, the principal defendant in the suit; the originator and operator of the conspiracy is a citizen and resident of the District of New Jersey, residing within the division of the federal court at Newark, N. J. It, together with its associated corporations, operates the largest industries of the State of Utah. There it, together with its associated corporations, operated the alleged conspiracy openly for years in manners and brutality or brutalities of the days before the Civil War. The whole of it is done, caused to be done, supervised to be done, and executed by and through its Officers and Agents in charge and operation of its Headquarters in Jersey City, New Jersey. The principles of the case of Vacuum Oil Co. v. Eagle Oil Co., supra, govern the case under consideration and the answer to the question must be that the non-resident defendants were and are amenable to the process of the Court below.

19. 15 U. S. C. A. Sec. 22. VENUE OF ACTIONS AGAINST CORP'S. SERVICE OF PROCESS.

Any suit, action or proceeding under the anti-trust laws against a corporation may be brought not only in the

judicial district wherein it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. (Oct. 15, 1914, Ch. 323, Sec. 12, 38 Stat. 736.) (XVI. par. 18.) (15 U. S. C. A. Sections 1, 3, 4, 5, 15, 24. See them in the Appendix to this Brief, pp. 4a-5a.)

20. 18 U. S. C. A. 550. "Principals Defined". See the section, p. 15a of the Appendix.

21. All persons who aid or abet in commission of a misdemeanor are "principals". Buttler v. State, 198 S. E. 184, 55 Ga. App. 678; Lewis v. State, 195 S. E. 285, 286, 57 Ga. App. 340; Johnson v. State, 197 S. E. 61, 57 Ga. App. 814.

22. Person who aids or abets another in committing misdemeanor is "principal". Lancaster v. Pitts, 122 So. 531, 532, 154 Miss. 406.

23. A person present, aiding and assisting another in commission of an offense is a "principal". Fleming vs. Commonwealth, 290 S. W. 339, 342, 217 Ky. 485.

24. Those who are present aiding, commanding, or abetting are deemed "principals". United States v. Young & Holland Co., 170 F. 110, 113, citing United States v. Gooding, 12 Wheat. (25 U. S.) 460, 4472. 6 L. Ed. 693.

25. Common Law. All who are present aiding and abetting in a felony, are treated as "principals", while in the case of a misdemeanor all who aid, abet or participate are considered as principals of equal guilt.

Supreme Court of the State of New Jersey in re State vs. Woodworth, 1 A. (2nd) 254, 257, citing: Engeman v. State, 54 N. J. L. 65; Roesel v. State, 62 N. J. L. 216, 222, 41 A. 408; State v. Warady, 78 N. J. L. 687, 75 A. 977; State v. Wilson, 79 N. J. L. 241, 78 A. 144; State vs. Spence, 81 N. J. L. 265, 79 A. 1029; State vs. Hanraha, 87 N. J. L. 391, 96 A. 1103; State vs. Carlino, 98 N. J. L. 48, 118 A. 784, affirmed 99 N. J. L. 292, 122 A. 830; State vs. De Bellis, 136 A. 603, 5 N. J. Misc. 375, 104 N. J. L. 187, 138 A. 923, 143 A. 330; State v. Dobow, 117 N. J. L. 560, 189 A. 915, 109 A. L. R. 1488, 2 Hawk, P. C. Chap. 29, Sec. 1; 4 Blackstone's Com. 34; Reg. v. Greenwood, 185, 9 Eng. L. & Eq. Rep. 235.

26. THE LAW WELL SETTLED. The law is well established that "Principal jurisdiction involves and carries along with itself power over matters that can properly be regarded as accessories. * * * And by virtue of this principle the District Court has jurisdiction of many matters as ancillary over which there would be no jurisdiction, were these matters independent and standing alone." (1-3) Loft, Inc. v. Corn Products Refining Co. 7 Cri., 103 F. 2d. 1, 10 (quoting Dobie on Fed. Procedure; Venner v. Pennsylvania Steel Co. 250 F. 292; Eichel v. United States F. & G. Co., 245 U. S. 102, 38 S. Ct. 47, 62 L. Ed. 177; Pell v. McCabe, 2 Cir., 256 F. 512; Wilson v. United American Lines, 21 P. 2d 872. . . . To prevent the relitigation in other courts of the issues heard and adjudged in the original suit.

(3) Seemingly Rule 4 (e) was intended to apply to suits in rem and suits where special statutes authorized an action against a noninhabitant. However to obtain legal service to sustain jurisdiction, ancillary or otherwise, in default of special statute Rule 4 (e) must be followed.

27. The court below is invested with jurisdiction to prevent and restrain violations of sections 1 to 7, inclusive, or section 15 of Title 15 U. S. C. A. (July 2, 1890, c. 647, Sec. 4, 26 Stat. 209; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167.)

The court below is invested with jurisdiction of the conspiracy alleged in the Complaint, and it writes down "contract". How many "contract" are there in 25 Counts alleged in the Declaration?

The plaintiff herein made appear (pp. 1, 2, 3 Declaration) that the ends of justice require that the non-resident defendants should be brought before the court below, and the court below caused them to be summoned, and it is immaterial whether they reside in the district in which the court is held or not; and the summonses to that end were served in the respective districts of the non-resident defendants by the marshals thereof (Title 15, U. S. C. A. Sec. 5; July 2, 1890, c. 647, Sec. 5, 26 Stat. 210; and see: Sec. 103 U. S. C. A. Title 28 supra); People's Tobacco Company v. American Tobacco Company, 246 U. S. 79, 87, 38 S. Ct. 233, 62 L. Ed. 587, Ann. cas. 1918 C. 537;

Gen. Inv. Co. v. Lake Shore Ra'wy, 260 U. S. 261, 279, 43 S. Ct. 106, 67 L. Ed. 244;

Minnesota v. Northern Securities Co., 194 U. S. 48, 71, 24 S. Ct. 598, 48 L. Ed. 870;

Wilder Manufacturing Co. v. Corn Product Refining Co., 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520; and cases in point. See also Sanborn, VanDevanter, Hook, and Adams in re United States vs. Standard Oil Co., supra. (28 U. S. C. A. 729.)

28. As to whether or not any overt acts were committed within the jurisdiction of the court below in furtherance of the common design or the conspiracy so operated within

the Territorial Jurisdiction of the United States District Court for the District of New Jersey giving the said Court jurisdiction of the whole case see:

Curtis vs. Pappas et al. Paterson, N. J. District Court;

Curtis vs. Peraino, 4th Judicial Dist. Ct. of Bergen County, two cases;

Village of Ridgewood vs. James Damis, Court of Chancery of New Jersey; material parts of the Record submitted to Judge Walker of the court below;

Curtis vs. Peraino, C. Ct. of Bergen County, N. J.

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY.

Cases in which Nicholas J. Curtis is or was a party.

E-2331. Curtis vs. American Tel & Tel. Co. et als. Order dismissing case without costs.

E-4129. Curtis vs. Citizens Nat. Bank & Trust Co. et als. Order dismissing case pursuant to General Rule 27.

E-5109. Curtis vs. Minas Candaras, et al. Order dismissing case with costs to defendants.

L-1722. Curtis vs. Paramount Famous Lasky Corp., et als. Order dismissing case.

L-4628. Curtis vs. Pappas, et al. Order striking out complaint with costs to defendants.

L-4759. Curtis vs. Pappas, et als. Order dismissing case pursuant to Rule 27.

L-5773. Curtis vs. Utah Fuel Company. Order granting motion to strike complaint and dismissing motion for rehearing.

Civil 728. Curtis vs. Utah Fuel Company et als now under consideration.

For a period of 14 long years the court below is blockaded and besieged by the operation of the conspiracy and the

defendants in the suit pending are sued only for their parts of the or in the prosecution of the conspiracy.

XVII. SERVICE OF PROCESS.

1. XVI. paragraphs 1 to 27 repeated here. The sections just above.

2. Hughes Federal Practice. SERVICE UNDER STATUTE OF UNITED STATES. Section 18911. In General. Rule 4 (d) (7) provides, that in addition to the method of service provided for in Rule 4 (b) (1) and (3) upon individuals, corporations, partnerships or unincorporated associations, such defendants may also be served in the manner prescribed by any statute of the United States or by the law of the state in which service is made. The rule reads: "Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state."

2. Under Rule 81 (e) the law of the state includes the statutes of the state and state court decisions construing them. Citing U. S. C. A. Title 28, Sec. 725.

3. H. Fed. Pr. Sec. 18912. STATUTES OF THE UNITED STATES COVERING SERVICE.

Various Statutes of the United States provide specially a method of service in cases covered by them. . . .

4. H. Fed. Pr. Sec. 18913. SERVICE IN THE MANNER PRESCRIBED "BY ANY STATUTE OF THE UNITED STATES." . . . The reference in Rule 4 (d) (7) to service in the manner prescribed "by any statute of the United States" covers service in cases brought under particular statutes of the United States, which themselves provide a method of service. The meaning of Rule 4 (d) (7) is that in such case a particular method of service provided for by the particular statute may be followed.

5. H. Fed. Pr. Vol. 17, p. 203, Section 18993. PROCESS. TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

Rule 4 (e) also provides that "where a statute of the United States so provides" service may be made beyond the boundaries of the state. There are several such statutes already in force—11—11. Such statutes include:

15 U. S. C. A. Sec. 5, permitting the bringing in of additional parties under the Sherman Acts; 15 U. S. C. A., Sec. 25; 15 U. S. C. A., Sec. 22. District in which to sue corporation. Clayton Act, Sec. 25. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of Secs. 12, 13, 14, 21, and 22-27 of this title. . . . Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas (Summons) to that end may be served in any district by the Marshal thereof. Oct. 15, 1914, c. 323, Sec. 15, 38 Stat. 736. (28 U. S. C. A. 729). Sec. 44, permitting process to run anywhere in certain cases under the interstate commerce act.

Anti-Trust Act: Act of July 2, 1890, referred to in text, is set out as sections 1-7, and 15 Note. Sec. 15 applies to the provisions of this chapter generally.

6. There cannot be any doubt that 28 U. S. C. A. 103 prescribes the method prescribed by Federal Rule 4 as to the services of processes on parties defendants within its district. The statute is mandatory and in the instant case directs the plaintiff to proceed with the services of process by the same method he proceeded in serving those physically present within the district. Construction of the Statute, see III, subds. 16, 17, 18, supra.

The nonresident defendants are aiders and abetters within the meaning of Section 103 of Title 28, and the decision of Judges: Davis, Avis, and Clark in the Callahan case, 53 F. 2d. 467, is controlling authority on the case under consideration.

7. The Counts of aiding and abetting the defendant Utah Fuel Company in the prosecution of their conspiracy are based upon the provisions of the law found in 18 U. S. C. A. 550, and the conspiracy is a violation of section or the law found in Section 88 of Title 18, and the decision of Judge Forman of the court below in re: United States v. Jacobson, et al., District Court of the United States, District of New Jersey, July 19, 1940, 34 Fed. Supp. 215, is controlling authority on the case under consideration, to wit:

Forman, District Judge. The charges of aiding and abetting are based upon the provisions of the law found in 18 U. S. C. A., Sec. 550, and the conspiracy is alleged to be a violation of 18 U. S. C. A., Sec. 88. (Conclusions.)

It follows that for like reasons the court is of the opinion that the objections to the counts on aiding and abetting, and the count on conspiracy must be overruled. Each of the motions to quash on behalf of the defendants Jacobson and Cherry are denied.

To the same effect the Decisions of Davis, Clark, and

Avis, JJ., in Re: Calahan vs. United States, III. Par. 18, subd. c, supra; II. par. 4, Clark, C. J., in United States vs. Silverman, and cases collected and cited thereunder.

8. Haskel v. Aluminum Company of America, et al., 14 F. 2d. 864.

(1) It seems to be too firmly established to admit of argument that in statutes affecting venue the word "found" has been given a definite legal significance when applied to foreign corporations, and it will be presumed that, when Congress enacted the Clayton Act, it used the word as defined by the courts. Standard Oil Co. v. United States, 221 U. S. 1 at 59, 31 S. Ct. 502, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, Ann. Cas. 1912D, 734.

(3) On page 869. As I interpret the statute, such a plaintiff is at liberty to sue the offending defendant corporation (1) in the district where incorporated; (2) in the district where it is "found," as that word has been defined by the Courts; and (3) where it transacts business. . . . This court, therefore, has jurisdiction to entertain the action, because this is the district in which the defendant Aluminum Company of America is "transacting business." This construction of the act has been adopted by the federal courts in several cases. Venner v. Pennsylvania Steel Co. (D. C.), 250 F. 293; Southern Photo Material Co. v. Eastman Kodak Co. (D. C.), 254 F. 955; Eastman Kodak Co. v. Southern Photo Material Co. (C. C. A.), 295 F. 98; Frey & Son, Inc. v. Cudahy Packing Co. (D. C.), 228 F. 209.

I rule, therefore, that the plaintiff may resort to this court in an action to enforce his remedy under the anti-trust laws, and the suit should not be dismissed because of lack of jurisdiction.

(4) The remaining question of importance is whether the Court has acquired jurisdiction over the defendant by proper service upon it. . . .

The contention of the defendant respecting the service of process in Pennsylvania is that this court has no authority to issue a writ directed to the Marshal of the district of Western Pennsylvania, and if it has such authority it cannot be exercised without special order of the court.

(5, 6) As to the power of the court to issue process to run into other districts, I find that under the general provisions of law a United States District Court cannot issue process beyond (etc.).

But it can no longer be doubted that Congress has the power to confer upon that court authority to issue process beyond the territorial limits of its district. United States v. Union Pacific Railroad Co., 98 U. S. 569, 25 L. Ed. 143; Robertson v. Railroad Labor Board, Supra.

The Sherman Act of 1890 (Act of July 2, 1890, c. 647, Sec. 5, 26 Stat. 209, 210 (Comp. St. Sec. 8827), and Section 15 of the Clayton Act (Comp. St. Sec. 8835n), contain provisions which enable the court to send its process into other districts, to be served by the Marshal thereof, when, in any pending case, the ends of justice require that other parties shall be brought before the court. Section 12 of the Clayton Act is another instance of this special grant of power. It expressly provides that process may be served in the district of which the corporation is an inhabitant or wherever it may be found.

In enacting these provisions, Congress, in my opinion, contemplated the possibility that a suit might be brought within the jurisdiction of a court whose process would not reach to the defendant without enabling legislation,

and the provision was inserted in order that any court of competent jurisdiction might send its process for service into the district where the corporation was incorporated, or where it was transacting business so as to be amenable to legal process in that district.

When Congress provided that "all process" could be served in the district of which the corporation was an inhabitant, or wherever it might be found it had in mind any process issued by such court of competent jurisdiction *in conformity with the practice of that court.*

The writ issued in the case at bar in all respects conformed to the practice obtaining in this district in law actions, and the local rules relating to the manner of its issuance were complied with. In issuing similar process, under analogous provisions authorizing extra-territorial service, it has never, so far as I can learn, been deemed necessary to obtain an order of court.

9. U. S. C. A. Sec. 729. Ex Parte United States, 101 F. 2d. 870. The United States Petitioner Applying for Writ of Mandamus.

(13) See the par. in the reported case.

(14, 15) pp. 877-878. Section 722 of the Revised Statutes of the United States, which today primarily governs the criminal procedure of federal trial courts, provide that the trial court can follow the Wisconsin State Practice, so long as that practice is not offensive to the Constitutional guaranty of trial by jury. Title 28, Sec. 729, U. S. C. A. 28, U. S. C. A. Sec. 729. That the procedure in question does not violate the Sixth Amendment to the Constitution already has been shown.

(16, 20) . . . In the absence of prohibitive legislation courts have inherent power to provide themselves with appropriate procedure required for the performance of their tasks. Ex Parte Peterson, 253 U. S. 300, 312, 313, 4 (,) S. Ct. 543, 64 L. Ed. 919; Funk v. United States, 290 U. S. 371, 381, 384, 54 S. Ct. 212, 79 L. Ed. 369, 93 A. L. R. 1136.

10. Chulis v. Lehigh Valley Coal Co., 233 F. 422.
Judge Hough, writing for the Court, said:
"But there is a wide difference between the method of serving a summons and the effect of such service when made. The first relates to the 'form, manner, and order of conducting and carrying on suits.' The effect of the formal act called 'service' is not a question of practice at all, but one of jurisdiction, and jurisdiction in turn must be tested by substantive law." Par. quoted in Melckon v. Collins, et al., 30 F. Supp. (4) on page 161.

11. 28 U. S. C. A. 725. "It is sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States."

(1) The service of summonses in the case under consideration upon the nonresident defendants is authorized by the law found in 103 of Title 28, U. S. C. A.

(2) The service of process in the suit under consideration is also authorized by the law found in section 5 of Title 15, U. S. C. A. . . . and subpoenas (summons) to that end may be served in any district by the Marshal thereof. (28 U. S. C. A. 729.)
The court may cause them to be summoned, whether they reside in the district in which the court is held or not; . . . (July 2, 1890, c. 647, Sec. 5, 26 Stat. 210).

(3) The United States Marshals and their deputies have, in each State, the same powers, in executing the laws of the United States as the Sheriffs and their deputies in such State may have by law in executing the laws thereof. Sec. 504 of Title 28, U. S. C. A.

(4) R. S. of Utah. 104-5-3. Id. Service.—Who may Serve—Return.

The summons, together with a copy of the complaint, if any, may be served by the Sheriff of the county where the defendant may be found, or by any person over twenty-one years of age and not a party to the action. The Officer or other person serving a summons shall make due return thereof, within five days after service, to the person whose name is subscribed thereto. (C. L. 17, Sec. 6540.)

The Supreme Court of the State of Utah construes this said Statute (104-5-3-R. S. of Utah) as follows:

Straup, J. We are also of the opinion that the court erred in sustaining the demurrers.

There is nothing appearing on the face of the complaint from which it can be said that the defendants were not subject to the process and jurisdiction of the court. A demurrer for want of jurisdiction of the person raises only the question as to whether the defendant is such a person as can be subjected to the process and jurisdiction of the court. The court having jurisdiction of subject-matter acquires jurisdiction of a defendant either by his voluntary appearance or by process served upon him. The statute provides that the summons and a copy of the complaint may be served "where the defendant may be found." Continental Life Ins. and Inv. Co. v. Jones, 31 U. S. 403, 88 P. 229.

104-5-4. Id. On defendants residing in different Counties. Where there are several defendants residing in dif-

ferent counties, separate summons may be issued and served on the defendants residing therein. (C. L. 17, Sec. 6541.)

104-5-5. Id. Time of Service—Alias Summons. . . . If a summons is returned without being served upon any or all the defendants, another summons may be issued and served at any time within one year after the filing of the complaint. (C. L. 17, Sec. 6542.)

104-5-11. Manner of Serving Summons. The summons must be served by delivering a copy thereof as follows: (5) If the defendant is a domestic corporation, to the president or head of the corporation, secretary, treasurer, cashier or managing agent thereof.

(8) In all other cases, to the defendant personally, or by leaving such copy at his usual place of abode with some suitable person of at least the age of fourteen years.

104-5-18. Jurisdiction, When Acquired. From the time of the service of the summons or the filing of the complaint in a civil action the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings. (C. L. 17, Sec. 6559.)

13. In the manner prescribed by any statute law of the United States." Section 103 of Title 28, U. S. C. A., is a statute of the United States and prescribes the manner of dealing with the subject matter and the defendants as if the offenses against the laws of the U. S. were wholly committed within the Territorial Limits of the court below by parties defendants residing therein. The statute governs the whole United States as a single "district."

14. Federal Rule 4 (f). Bowser v. Daro, et al. (D. C., N. D. Cal., Jan. 23, 1941.

(2) . . . If the fact is that this moving defendant has been improperly joined in this action, his right is to object to his joinder as a co-defendant, and to obtain the relief afforded him by law by reason thereof.

However, motion to quash service and return of summons is not the appropriate method of raising the objection of misjoinder.

15. For authorities on this Question (XVII. c. of Questions Involved) see the decision and Notes thereunder of the Case of Clancy v. Balacier, et al., District Court of the United States, for the Southern District of New York, 27 Fed. Supp. 867, it is set out almost in full on pp. 71, 72 of the Typed Record of Pleadings on file in this Court.

16. Hughes Federal Practice, 18914. SERVICE IN THE MANNER PRESCRIBED BY STATE LAW.—WHAT IS LAW.

Rule 4 (d) (7) provides that: "Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of the rule, it is also sufficient if the summons and complaint are served * * * in the manner prescribed by the law of the state in which service is made."

Rule 81 (e) provides "When the law of a state is referred to, the word 'law' includes the statutes of that state and the state judicial decisions construing them." (28 U. S. C. A. 725.) See the several paragraphs just above.

XVIII. EXERCISE OF JURISDICTION.

The exercise of the power conferred upon the courts by the Constitution and the Acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the Courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded. It is the duty of the Court below to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein. Hence, in every suit in which the power to acquire jurisdiction of the subject matter and of the parties is conferred upon the courts, the duty is imposed upon it, if its discharge is invoked by the complainant, to summon and hear, before decision, not only every indispensable party, but every necessary party within reach of its process, every party who has an interest in the controversy, and who ought to be made a party to the suit in order that the court may finally adjudicate the whole matter although if he were not amenable to process, final justice might be administered between the other parties without his presence. Sanborn, VanDevanter, Hook, and Adams, In Re: U. S. v. Standard Oil Co., supra. Citing: Story's Eq. Pl.; Shields v. Barrows, 17 How. 130, 15 L. Ed. 158; Minnesota v. Northern Securities Co., 185 U. S. 199, 255, 22 Sup. Ct. 308, 46 L. Ed. 499.

XIX. JURISDICTION TO DISCHARGE CONSPIRATORS.

1. First sentence. A judgment (findings of fact and conclusions of law) applies the law to past or present facts. See page 27 of the printed parts of the Record of Pleadings as printed for the use of this court. See last par. of page 77, and four paragraphs on page 78 of the typed Record of Pleadings as filed in this Court.

Second sentence. (III. Par. 16 supra, 2:119—1, 2. R. S. of New Jersey.)

2. As to Ruling on Motion No. 1. Appearance Addison P. Rosenkrans, Esq., attorney for defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans. May it please the Court see page 9 supra.

MALPRACTICE. (38 C. J.) p. 520. As applied to attorneys at law, evil practice in a professional capacity and a resort to methods prohibited by law. Matter of Baum, 5 Silv. Sup. 462, 463, 8 N. Y. S. 771; Matter of Post, 4 Silv. Sup. 248, 249, 7 N. Y. S.; In Re: Rosenkrans, 84 N. J. Eq., 232, 241, 94 A. 42. MALPRACTICE may be either willful, negligent or ignorant. In Re: Rosenkrans.

3. In Re: Rosenkrans. (No. 39/653) Court of Chancery of New Jersey. April 30, 1915. 94 A. 43.

In the matter of Addison P. Rosenkrans, a solicitor of the Court of Chancery of New Jersey. On order to show cause why respondent should not be disbarred or otherwise disciplined and punished. Respondent suspended. Walker, Ch.

(2) Here we have a case of a solicitor of this court counseling and procuring a client to make an affidavit "that

she is the petitioner named in the foregoing petition," when, in fact, there was no petition in existence, and also "that the matters and things therein set forth are true, to the best of her knowledge and belief." It is hard to characterize this conduct of Rosenkrans, or, rather, it is hard to refrain from reprobating it as it deserves to be. It is more than strange that Rosenkrans should procure Mrs. Van Dien to subscribe an affidavit which was untrue in point of fact. He says he intended to draw a petition and annex the affidavit to it. This would have aggravated the matter. If he had done so, and had filed the petition he would have uttered and imposed upon the court a false affidavit. His conduct in this regard amounts to malpractice . . . it is enough for the purpose of this inquiry to say that Rosenkrans counseled and procured his client to subscribe and swear to an affidavit false in fact—a thing intolerable.

4. Such and such, and more corruptive, have been the practice of said Rosenkranses, as well as in the Paterson District Court as in the United States Court at Newark, New Jersey, in this cause ever since the year 1927-28. Their said motion is also false, because the Docket Entries certified by the Clerk of the Court show the defendant Harry Sussman out of District. On the hearing of the said present motion the defendant William V. Rosenkrans appeared and answered the call of the motion and theretofore applied to Mr. Charles Jaeckel, the Clerk of the Court, for permission to then and there operate the conspiracy as they had experts from Morristown, N. J., secretly present in the rear of the Court, and on Mr. Jaeckel's reluctance to allow him to practice such practice, he, the said William V. Rosenkrans, insisted thus: We are entitled under the rules. May it please the Court to see Mr. Charles Jaeckel,

Clerk of the Court below. The Court Stenographer, in order to cover Rosenkrans, did not transcribe the first hearing on said motion and that part of the conspiracy was never before this Court.

The civil liability of the said defendants is created by Federal Statutes. Title 8 U. S. C. A., Section 47, (R. S. Sec. 1980; and Title 15 U. S. C. A., Section 15; and is without respect to the amount in controversy, and is to recover threefold the damages which the plaintiff sustained. Title 18, U. S. C. A., Sec. 550. See United States v. Jacobson et al., District Court of the U. S. District of New Jersey, July, 1940, 34 Fed. Supp. 214. Forman, District Judge.

XX. ANY GENERAL DISTINCTION BETWEEN PERPETRATION AND PROCUREMENT NO LONGER OBTAINS. (* * * Clark, C. J. * * *.)

1. Yes. The Federal Statutes (R. S. Secs. 5323; 5427; Act of March 4, 1909, c. 321, Sec. 332, 35 Stat. 1152; Title 18, U. S. C. A. Sec. 550 (Criminal Code, Sec. 332); Title 15, U. S. C. A., Sec. 24; Title 8, U. S. C. A., Sec. 47) hold them responsible or answerable. See Davis, Clark, and Avis, J. J., In re: Callahan v. United States, 53 F. (2d) 467; Forman, D. J., In Re: United States v. Jacobson et al., 34 F. Supp. 214; and Sanborn, Van Devanter, Hook, and Adams, C. C. J., In Re: U. S. vs. Standard Oil Co., supra. In the said last case the Court says:

One who learns of a conspiracy after it is formed, and then joins it, or knowingly, aids in the execution of its scheme and share in its profits, becomes from that time as much a co-conspirator as if he were one of those who originally designed it and put it into operation. Citing: Lincoln v. Claflin, 7 Wall. 132, 138, 19 L Ed. 106; United

States v. Babcock, Fed. Cas. No. 14, 487; United States v. Cassidy (D. C.) 67 Fed. 698, 702; the Anarchists' case, 12 N. E. 865, 967, 17 N. E. 898, 122 Ill. 1, 2 Am. St. Rep. 320; United States v. Johnson, (C. C.) 26 Fed. 682, 684.

2. And In Re: State v. Fisher, Sup. Court of Nebraska, 174 N. W. R. 320, the Court says:

(6) If a member of the bar is aware of conspiracy of his client and others to obstruct justice and accomplish unlawful purposes in litigation in which he is employed as attorney, he should prevent such practice, if possible, and, if not should either expose such conspiracy or at least withdraw from the employment.

"An attorney is liable . . . where he and his client fraudulently conspire to do an illegal act, or where he acts dishonestly, with some sinister view, or for some improper purpose of his own which the law considers malicious."

Cooley on Torts. Joint Wrongs. Section 78. Citing: Farmer v. Crosby, 43 Minn. 459, 461, 45 N. W. 866, and see Roth v. Shupp, 94 Md. 55, 50 Atl. 430; Thomas Fruit Co. v. Livergood, 135 Okla. 105, 274 Pac. 417.

Where fraud or ultra vires is charged against them, the officers, directors and attorneys of a corporation are proper parties. Foster's Federal Practice, Sec. 111, p. 405. Citing: Geer v. Mathuson Alkali Works, 190 U. S. 428, 436, 47 L. Ed. 1122, 1126; Ervin v. Oregon Ry. & Nav. Co., 27 Fed. 625; Jones v. Missouri Edison Electric Co., 144 Fed. 76; United Cigarette Mach. Co. v. Winston C. Mach. Co., 194 Fed. 947; Ferguson v. Wilson, L. R. 2 Ch. App.

XXI. DOCTRINE OF RES JUDICATA.

(a) Please read in Point (f) on page 51 of the printed parts of the Record in this Court in the First Appeal.

(b) Please read in par. 5 on p. 57 to par. 6 on p. 59 of the printed parts of the Record in the first appeal.

(c) In stating the doctrine of res judicata, the courts frequently refer to the fact that the judgment sought to be used as a basis for the application of the doctrine was rendered without fraud or collusion. 30 Am. Jur., p. 941, Section 202. Citing: Riele v. Margolies, 279 U. S. 218, 73 L. Ed. 669, 49 S. Ct. 310; Cae v. Armour Fertilizer Works, 237 U. S. 413, 59 L. Ed. 1027, 35 S. Ct. 625; Howkins v. Glenn, 131 U. S. 319, 33 L. Ed. 184, 9 S. Ct. 739; Edmonds v. Clenn-Colusa Irreg. Dist. 217 Cal. 436, 19 P. (2d) 502, citing R. C. L.; Price v. Sixth Dist. Agre. Asso., 201 Cal. 502, 258 P. 387, citing R. C. L.; Riley v. Policemen's Pension Fund, 210 Iowa 449, 228 N. W. 578, citing R. C. L.; Carroll v. Fullerton, 215 Ky. 558, 286 S. W. 847, citing R. C. L.; Christopher v. Sisk, 133 Md. 48, 104 A. 355, citing R. C. L.; Wernwag v. Pawling, 5 Gill & J. (Md.) 500, 25 Am. Dec. 317; Skinner v. Argentina Twp., 238 Mich. 533, 213 N. W. 680, citing R. C. L.; Brenner v. Title Guarantee & T. Co., 276 N. Y. 230, 11 N. Ed. (2d) 890, 114 A. L. R. 1010; Dennis v. Pease, 61 N. D. 718, 240 N. W. 611, citing R. C. L.; Wright v. Schick, 134 Ohio St. 193, 16 N. E. (2d) 399 (and others).

d. Since it is generally held that the principles of res judicata may not be invoked to sustain fraud, (see 2 Freeman, Judgments, 5th ed. p. 1545, Sec. 731) and that a

judgment obtained by fraud or collusion may not be used as basis for the application of the doctrine of res judicata. New Orleans v. Gaines (New Orleans v. Whitney) 138 U. S. 595, 34 L. Ed. 1102, 11 S. Ct. 428; Welch v. Mandeville, 1 Wheat (U. S.) 233, 4 L. Ed. 79; Weil v. Defenbach, 36 Idah. 37, 208 P. 1025, citing R. C. L.; Ball v. Reece, 58 Kan. 614, 50 P. 875, 62 Am. St. Rep. 638; King v. Emmons 283 Mich. 116, 277 N. W. 851, 115 A. L. R. 564; (and other). (R. S. of New Jersey: 2:119-1-2.) (XIX. subds. 1, 2, 3, and 4 supra are repeated here.) See last line on p. 57, p. 58, and 3 paragraphs of p. 59 of the printed parts of the Record of Pleadings.

2. R. S. of New Jersey. 25:2-3. Conveyances, etc. and judgments and executions in fraud of creditors void as against persons defrauded. Every conveyance, . . . and every judgment and execution which have been or shall be contrived in fraud, covin or collusion, with intent to hinder, delay or defraud creditors and others of their lawful actions, debts, damages or demands, shall be deemed and taken (only as against those persons, their executors, administrators or assigns, whose actions, debts, damages or demands are or may be hindered or defeated by such covinous or fraudulent devices and practices) to be utterly void and of no effect, any feigned consideration, color or other pretence to the contrary notwithstanding. Source. Rep. 1877, p. 446, Sec. 12, (C. S. p. 2618, Sec. 12.) Cases collected. Floyd v. Floyd, 95 N. J. Eq. 661. Kalisch, J. on p. 665, 5th par.

What was said by Vice-Chancellor Van Fleet, in Doughty v. Doughty, 27 N. J. Eq. 315 (at p. 318), is repeated here. "And the power of the court to relieve against fraudulent judgments is not limited to judgments, recovered in the courts of the same state, but may be exerted against judg-

ments recovered in the courts of other states, whenever they are sought to be made the foundation of an action or defense''. Royal Organum v. Carley, 52 N. J. Eq. 642;

National Surety Co. v. Mulligan, 105 N. J. L. 336. Court of Errors and Appeals (at p. 341 2d par.) The only defenses that can be made . . . is that it was fraudulently procured, . . . Smith v. Swart, 103 N. J. L. 150. See also Simon v. Henke, 102 N. J. Eq. 115, (at p. 123, 5th par.) citing Commercial, &c. v. Hamilton, 99 N. J. Eq. 492; affirmed 101 N. J. Eq. 219; N. J. Ch. 1924; Judgment may be attacked for fraud by a suit in equity, Nugent v. Hayes, 125 A. 576, 96 N. J. Eq. 485; Equity will relieve against a judgment which was obtained by fraud. Dringer v. Erie Ry. Co., 8 A. 811, 42 N. J. Eq. 573, affirmed Dringer v. Jewett, 13 A. 664, 43 N. J. Eq. 701; Boulton v. Scott's Adm'rs. 3 N. J. Eq. 231; Tomkins v. Tomkins, 11 N. J. Eq. 512;

Judgments of courts of law are liable to be relieved against on account of fraud in their procurement, Boulton v. Scott's Adm'rs. 3 N. J. Eq. 231; Court of Equity will grant relief against judgment obtained by fraud against which court of law cannot afford adequate relief.—Simon v. Henke, 139 A. 887, 102 N. J. Eq. 115;

Conspiracy. Civil Liability. Van Horn v. Van Horn, 20 A. 485, 52 N. J. Law 284, 10 L. R. A. 184. Evidence of the fraud perpetrated. See the nine affidavits set out in pp. 63 to 70 of the printed parts of the Record.

XXII. INHIBITION.

(a) See page 3 of the Complaint. "Jurisdiction founded on the existence of several Federal questions and amount in controversy (b).

(b) The inhibition of the judiciary Acts of March 3, 1887, c. 373, 24 Stat. 552, and Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433 (U. S. Comp. St. 1901, p. 508), that "no civil suit shall be brought before either of said courts (the Circuit Courts and District Courts) against any person by any original process or proceeding in any other district than that whereof he is an inhabitant," does not restrict the jurisdiction of the court, nor its power to bring in parties without its district, in the case under consideration, because that provision is inapplicable to instances in which exclusive jurisdiction over particular cases or classes of cases, is created and conferred upon the courts of the United States by special acts of Congress. Sanborn, Van Deventer, Hook, and Adams, in re: United States v. Standard Oil Co. supra. Citing: U. S. v. Mooney, 116 U. S. 106, 6 Sup. Ct. 304, 29 L. Ed. 550; Van Patten v. Chicago, Milwaukee & St. Paul R. C. (C. C.) 74 Fed. 981, 985-988; Atkin v. Disintegrating Co. 18 Wall. 272, 21 L. Ed. 841; In re: Louisville Underwriters, 134 U. S. 488, 493, 10 Sup. Ct. 221, 37 L. Ed. 1211.

There can therefore be no doubt that Congress had the authority to confer jurisdiction of this case upon the court below, nor that they have lawfully exercised that authority. Sanbron, C. J., supra.

See also: III. subds. 1 to 19 inclusive of this Brief.

XXIII. THE ENTRIES OF THE DEFAULTS.

1. Please see Application for Entry of Judgment, (etc.) pp. 51 to 56 inclusive of the typed Record of Pleadings as filed here in this Court.

2. AUTHORITIES IN SUPPORT OF PLEADINGS, THE ENTRIES OF DEFAULTS.

Defaulting party has lost his standing in Court. Clifton v. Tombs. See par. 5 of Mem. to general status of the case, p. ; 21 F. (2nd on p. 897. (3-4) When a party is in default and a bill taken pro confesso, while the court will give only such relief as is proper upon the bill, nevertheless the party himself has lost his standing in court, cannot appear in any way, cannot adduce any evidence, and cannot be heard at the final hearing. Frow v. Wooster. It is true that it is within the inherent power of the court to set aside a decree pro confesso (O'Brien v. Lashar (C. C. A. 2nd) 273 F. 520), and the court has that power also by equity rule. 5. But the party in default should show good cause before the default should be set aside. Furthermore Rule 17 provides that, when the bill is taken pro confesso, the court may proceed to a final decree at any time after the expiration of thirty days after the entry of the order pro confesso, and such decree shall be deemed absolute unless the court shall at the same term set aside the same or enlarge the time for filing the answer upon cause shown upon motion and affidavit; The plaintiff (defendants here in the case before the Court) made no motion to set aside the default or for leave to reply to the counter claim (complaint here). If he had made such motion and had shown some excuse for his failure to reply (plead or

answer here) . . . There is a strong and indeed strict, analogy in this respect between default in actions at law and proceedings upon bills pro confesso in equity. Thompson v. Wooster, 114 U. S. 104, 111, 5 S. Ct. 788, 29 L. Ed. 105; Central R. R. Co. v. Central Trust Co., 133 U. S. 83, 90, 10 S. Ct. 235, 33 L. Ed. 561.

3. A default is now a default, at law or in equity. The Annual Practice, 1911, p. 380 "Default in Pleading."

4. EFFECT OF TAKING THE BILL PRO CONFESSO—The effect of the order was summarized in the words "a decree pro confesso regards the statements of the bill as confessed." Thompson v. Wooster, 114 U. S. 104, 29 L. Ed. 107. In that case Mr. Justice Bradley said, "that to take a bill pro confesso is to order it to stand as if its statements were confessed to be true—a decree pro confesso is a decree based on such statements, assumed to be true, and . . . as binding and conclusive as any decree rendered in the most solemn manner," which cannot be impeached collaterally, but only upon a bill for review or a bill to set it aside for fraud.

5. STATUS OF THE DEFENDANT AFTER THE ORDER AND BEFORE THE DECREE—The order taking the bill pro confesso is in no sense a decree pro confesso, but the case indicates that the defendant no longer has a right to be heard as to the form and scope of the decree. He is not entitled to notice of the application for the decree. Austin v. Riley, 55 Fed. 833, 837; The defaulting defendant has merely lost his standing in Court. Mr. Justice Bradley, in Frow v. DeLa Vega, 15 Wall. 552, 21 L. Ed. 60.

"FILE ANSWER WITHIN SUCH TIME AS THE

COURT SHALL DIRECT." O'Brien v. Lashar, 273 Fed. Rep. 520 (C. C. A. 2).

6. The general effect of the entry of the default is that of the decree pro confesso of Equity Rule 16. The latter's effect has been stated: "When a party is in default and a bill taken pro confesso, while the court will give only such relief as is proper upon the bill, nevertheless the party himself has lost his standing in court, cannot appear in any way, cannot adduce any evidence and cannot be heard at the final hearing. Moore's Fed. Practice, p. 3165. Citing: Clifton v. Tombs (C. C. A. 4th) (1927), 15 Wall. 552, 554, 21 L. Ed. 60, and Thomson v. Wooster, 114 U. S. 104, 112, 113, 114, 5 S. Ct. 788, 29 L. Ed. 105, which supports the text; see also Austin v. Riley (C. C. S. D. Ia., 55 Fed. 833, 837; Interstate Commerce Commission v. Daley, No. 55 Dist. Ct., District of Massachusetts, F. 13, 1939. McLellan, Dist. J. This cause come on for a hearing today on the motion list upon the plaintiff's motion for judgment on the pleadings. . . . Under the circumstances the motion for judgment on the pleadings is not granted. But it would seem that a default may now be entered under rules of Civil Procedure for District Courts, Rule 55 (b) (2), 28 U. S. C. A. following section 723c upon application therefor by the plaintiff.

7. United States, for and in behalf of Federal Housing Administration v. Jackson, et al., 25 F. Supp. 79. District Court, Dist. of Oregon, Sept. 30, 1938. James Alger Fee, Dist. J. Application has been made in this case for the entry of the default of the defendant. From the record it appears that a judgment for affirmative relief is sought and the defendant has failed to plead or otherwise defend. Appropriate affidavit has been filed under Rule 55, Rules

of Civil Procedure, 28 U. S. C. A. following Section 723C, this default should be entered by the Clerk as of course without any application to the Court. However, since the Court has power to enter an order of default and Rule 55 is not a limitation thereof, the court grants the motion and enters the default.

In future cases, however, where the requirements set out in the rule are fulfilled, the Clerk will enter a default and no order will be entered by the court.

8. M Fed. Pr. 55-02. A judgment entered by default where the court has jurisdiction of the person (see Atchison, Topeka & Santa Fe Railway Co. v. Wells, 265 U. S. 101, 44 S. Ct. 469, 68 L. Ed. 928), and of the subject matter has the same effect as any other judgment on the merits. See Hefner v. North Western Mut. Life Ins. Co., 123 U. S. 747, 8 S. Ct. 337, 31 L. Ed. 313 . . . where the record supports the judgment, the defaulted party's remedy is to move the trial court to set aside the default judgment and permit him to plead.

9. Rose Collester, Appt. v. Interstate Fidelity Bldg. & Loan Association of Utah; Arizona Sup. Ct., December 7, 1937. 38 P. (2nd) 626; A. L. R. A. 98, page 1021. A default judgment admits as true all the material allegations properly set forth in the complaint, and is just as binding and conclusive as though it had been rendered after answer and contest. See R. C. L. title "Judgments," Sec. 461, 667, 669, and 987; Sodine v. Sodine, 94 Min. 301, 102 N. W. 861, 110 Am. St. Rep. 371; Tub City Min. & Mill. Co. v. Otterson, 16 Ariz. 305, 146 P. 203, 206, L. R. A. 1916E1; Last Chance Min. Co., et al. v. Tyler Min. Co., 157 U. S. 683, 15 S. Ct. 733, 39 L. Ed. 839.

10. 15 R. C. L. Judgments. Sec. 461. Conclusiveness of Default Judgments and Decrees Pro Confesso.—The rule as to conclusiveness of judgments applies to a judgment by default. Citing: 7 L. R. A. 578, and a judgment of the same court, or one of concurrent jurisdiction even if rendered by default, ordinarily operates as res judicata and may be pleaded in bar as an estoppel. When properly entered, it is conclusive and binding between the parties as to the matters litigated. Citing Tootle v. McClellan, & Indian Terr. 64, 103 S. W. 766, 12 L. R. A. (N. S.) 941.

11. Pleading and Practice in New Jersey—Revised Edition. Geo. S. Harris, 1939. Sec. 582. Judgment by Default.—Grounds for. Whenever defendant fails to comply with the rules of pleading he lays himself open to an entry of judgment by default. R. S. 1937, 2:27-191; Cumul. Suppl. to C. S. 163-290. Illustrations of cases wherein judgments by default have been entered against defendants are: when the defendant fails to file an answer to complaint within twenty days after the service of summons and complaint (R. S. 1937, 2:27-292; C. S. c094, Sec. 133; S. C. R. (1938) 76; See Sec. 390, Sec. 391 (upon failure of a party to plead according to the rules, a judgment of non-suit or judgment by default may be entered respectively by defendant or plaintiff. Sec. 391. Citations: Harris, Cont. Sec. 582. A rule for judgment by default may be entered by the plaintiff as of course, either in term or vacation without any special order of the court. R. S. 1937, 2:27-192; C. S. 4094, Sec. 100; See Sec. 391. Sec. 599. Affidavit for Setting Aside Judgment. Citations;

Kocher and Tryer, New Jersey Chancery Practice. Chapter VI. Decree Pro Confesso. Sec. 250. In General. When the time limited for the appearance of the defendant has expired, the complainant's solicitor will file the proofs ...

of service of notice or subpoena in the Clerk's Office, at the same time mailing to the Clerk a decree pro confesso against such of the adult defendants as have not answered. The decree will be entered by the Clerk without notice and of course. Dickinson's Ch. Pr. 34.

Moore's Fed. Pr., page 3159. A default judgment may be set aside in accordance with Rule 60 (b). Cases, procedure and citations.

12. The default of Dr. E. R. Murphy constitutes an admission to the effect that (a) he is the person named in the writ, and Declaration and intended to be sued; (b) and that the Court has acquired jurisdiction of his person and has jurisdiction of the cause of action; (c) the due execution of the contract to furnish medical and surgical services and operations, etc. See Sec. 42-1-50, set out on pp. 47-48 of Declaration. See the R. S. of Utah which appellant filed with his Record on Appeal in this Court; (d) the authority and capacity of the Utah Fuel Company to make the contract with its employees; (e) that he was a Vice Principal (R. S. S. of Utah, 49-6-1) of the defendant Utah Fuel Company and controlled companies and in complete charge and control of its medical system and hospital with the duty of controlling and conducting the transaction and property of the Utah Fuel Company.

That he had general supervision of the affairs pertaining to the medical system and its local hospital thereof with powers and authority to furnish prompt medical attention, hospitalization, operation, etc., as he generally did with all the other employees and their families; (g) that he took appellant out of his regular employment on the railroad washout construction and made him use his home as hospital and himself as man nurse; (h) that he falsely practiced medicine on the brother of the appellant for a

period of 40 days at Clear Creek, Utah; (i) and that the Utah Fuel Company paid appellant the wages per day which he was receiving at his said regular work. It follows that there is nothing left to be decided by the District Judge. Of Judicial Notice all the overt acts charged to the defendants have been committed to suppress the above stated crimes and others.

XXIV.

Judge Thomas Glynn Walker, in his refusal to consider the evidence set forth in the exhibits submitted to him, violated Article IV, Section 1 of the United States Constitution; And

Sections 41, 687, 688, and 695 of Title 28 U. S. C. A.

The perjuries committed by the respective parties in the District of Columbia and Third District Court of Salt Lake County, Utah, and the proceedings had thereon constitute Exhibit E in the first action against the Utah Fuel Company in the court below and in the present complaint the said Exhibit E is referred to in the last subdivision of par. 32 on page 27. Exhibit A of June, 1941. (See Memo. in the App. pp. 37a to 41a.) This said exhibit is also made a part of the present complaint. It follows that the statement of Judge Thomas Glynn Walker to the effect that the petitioner herein did not give notice according to Federal Rule 5 is not sustained by the facts on the record.

See also the Bill of Exceptions as filed with the Notice of Intention to Apply for a Writ of Mandamus; and Notice of Appeal.

The exhibits submitted and filed exhibit the havoc and

criminality practiced by the defendants, as well as those which they caused to be practiced or committed.

Hence, the court below denied to the plaintiff herein the equal benefits of all laws and proceedings and granted favors to persons unfit to be at large.

XXV. EFFECT OF REFUSAL TO APPLY AND CONSTRUE FOUR COUNTS OF THE COMPLAINT.

1. a. The refusal of the court below to consider the Third, Fourth, Fifth, and Sixth Counts of the Declaration constitutes a wrongful refusal to perform the functions of his office. Hughe's Federal Practice, Section 7232, and cases cited.

b. It is a Decision directly contrary to the law which leads the plaintiff to believe that Judge Walker acted against the law, and that he considered only his own will. Hughe's Federal Practice, Section 7232, on page 633, and cases cited; Freeman on Judgments, Sections 378, 386; The Record or Judgment Roll, Secs. 175 to 193. Le Clair v. Calls Him, 233 Pac. 1087, 1091, 106 Okl. 247. Rules of Civil Procedure, Rule 44, following Sec. 723c of Title 28, U. S. C. A.

(49 C. J.), p. 116. (Sec. 108). 3. Parts of Pleading Considerate.

2. A pleading must be construed as an entirety (Ryland v. Hollinger, 117 Fed. 216, 54 C. C. A. 248; Prescott, etc. R. Co. v. Atchison, etc. R. Co., 73 Fed. 438, numerous other cases follow here), including the caption (McCloskey v. Strickland, 7 Iowa 259), and a count must be considered

as a whole. Ruffin Coal, etc. Co. v. Rich, 241 Ala. 622, 108 S. 600; Alabama Power Co. v. Stogner, 208 Ala. 666, 95 S. 151; Louis Pizits Dry Goods Co. v. Cusiman, 206 Ala. 689, 91 S. 779; Louisville, etc. R. Co. v. Smith, 163 Ala. 141, 50 S. 241; Louisville, etc. v. Johnson, 162 Ala. 665, 5 S. 300; Morrison v. Clark, 14 Ala. A. 323, 70 S. 200, cer. denied Ex P. Morrison, 195 Atl. 696 Mem., 70 S. 1014 Mem.). Effect should be given to every part of the Pleading (Mildiken v. Thyson Comm. Co., 202 Mo. 637, 100 S. W. 604), and all parts will, if the language permit, be so construed as to be consistent with each other. Wagner v. Brady, 130 Tenn. 554, 171 S. W. 117; Derosia v. Farland, 86 Vt. 15, 83 A. 271.

All introductory allegations will be considered as applying, so far as necessary, in determining the facts alleged. Great Western Gold Co. v. Chambers, 155 Cal. 364, 101 P. 6.

XXVI. THE ORDERS ENTERED ON THE MEMORANDUM DECISION.

The orders setting aside the services of summonses are in the nature of a final judgment and are therefore immediately appealable. Pleading and Practice in New Jersey, Harris, Sec. 272, citing: Sweeney v. Miner, 88 N. J. L. 361, 96 A. 1014.

b. The judgment must be consistent with the pleadings, that is to say, the judgment must be responsive answer to the issues which were created by the pleadings. Cresci v. Ganely, 99 N. J. L. 417, 124 A. 68; Union Garage Co. v. Wilner, 98 N. J. L. 441, 120 A. 4; Warder v. Whitall, 1 N. J. L. 98.

c. The judgment must conform to the pleadings and the issues made thereby. (Goodreich Transit Co. v. City of Chicago, 4 F. (2nd) 636; St. Louis Merchants' Bridge Terminal Ry. Co. v. Schuerman, 237 F. 1 cer. de. 242 U. S. 652, 61 L. Ed. 546, 37 Sup. Ct. 246; Wagner Nat. Bank v. Welch, 164 Fed. 813) and the cause of action thereby asserted. Merill v. Rokes, 54 Fed. 450. Cyc. of Fed. Procedure, Vol. v. Sec. 1496.

d. SUPPORT IN RECORD, EVIDENCE OR FINDINGS.

A decree (or Order) of dismissal must be sustained by the record and proofs. Lindley v. Denver, 259 Fed. 83.

e. (31 Cyc.) p. 670. XIII. ISSUES, PROOF AND VARIANCE. See Judgments 23 Cyc. 816.

Issues are the questions in dispute between the parties to an action (Wolcott v. Wigton, 7 Ind. 44; New York, etc. Land Co. v. Votaaw, 16 Tex. Civ. App. 585; Barnes v. Dow, 59 Vt. 530, 10 Atl. 258; Hollister v. Young, 42 Vt. 403).

They may be issues of law or of fact. Schummacher v. Negberg, 96 Mo. App. 598, 70 S. W. 910. An issue of law ordinarily arises upon a demurrer (motion) McDermott v. Halleck, 65 Kan. 403, 69 Pac. 335. An issue of fact arises upon a denial of an allegation made by the opposite party. Burton v. Johnson, 2 Ind. 339.

f. 4. Evidence which tend to prove or disprove an issue presented by the pleadings should not be excluded. (31 Cyc.), 680. Leon v. Kerrison, 47 Fla. 178, 36 So. 173; Cane v. Lieberman, 103 N. Y. Supp. 728. See also Kelley v. McKenna, 18 Mich. 381.

(d) Several Counts or Defenses. (31 Cyc.) p. 683.

The same evidence may be available for more than one count or defense. Dayton v. Monrae, 47 Mich. 193, 10 S. W. 196. See also Rogers v. Mexico City Banking Co. Tex. Civ. App. 103 S. W. 461; p. 346 L. Where there are issues both of law and fact. Where issues of fact as well as law are raised, final judgment on disposing of the demurrer (motion) should not be rendered until the former are tried. State v. Crow, 11 Ark. 642; Clark v. Mutual Reserve L. Ins. Co. 23 App. Co. 546; Riley v. Loughrey, 22 Ill. 97; Bell v. Sheldon, 12 Ill. 372; Merreweather v. Gregory, 3 Ill. 50; Seits v. Sinel, 62 Ind. 253; Cook v. Brown, 6 Blackf. 220; Fitch v. Dun, 3 Blackf. 131; Paterson v. Salmon, 3 Blackf. 131; Hanna v. Ewing, 3 Blackf. 24, many other cases follow here.

XXVII.

A judgment (findings of fact and conclusions of law, or Order) void upon its face and requires only an inspection of the record to demonstrate its invalidity is a mere nullity, in legal effect no judgment (Order) at all, conferring no right and affording no justification. Freeman on Judgments, Vol. 1, Sec. 322, p. 643, citing: Voorhees v. Bank, 10 Pet. (U. S.) 475, 9 L. Ed. 501; Estate of Pusey, 180 Cal. 368, 181 Pac. 642, Forbes v. Hyde, 31 Cal. 342; Chicago, etc. R. R. Co. v. Summers, 113 Ind. 10, 3 Am. State Rep. 616, 14 N. E. 733; Cain v. Goda, 84 Ind. 209; Heisinger v. Modern Brotherhood of Am. 179 N. W. 161; Clay County Court v. Baker, 210 Mo. App. 63, 241 S. W. 447; Barnes v. Montana Lumber and Hardware Co., 216 Pac. 335; Henderson v. Daniels, 62 Mont. 363; Carron v. Martin, 26 N. J. L. 598.

XXVIII.

It is respectfully insisted that the Court below misconceived the laws of the United States determinative of the rights of the parties before it, committing error in the following respect:

1. In not peremptorily denying the defendants', Utah Fuel Co. et als., Motion and Special Appearance interposed to dismiss the Declaration or Complaint.

2. In refusing to consider the facts, laws, and parts of the Federal Rules of Civil Procedure interposed and set forth in answer to each and every defense interposed by the defendants, Utah Fuel Company, et als., in the Opposing Affidavit filed and submitted by the plaintiff-appellant in opposition to their said motion to dismiss the Complaint.

3. In refusing to consider plaintiff-appellant's Application for Commission to take Depositions and Examine Witnesses residing out of the United States and in the then Kingdom of Greece.

4. In not acting upon plaintiff-appellant's Motion and Application to take Deposition and Examine Parties and Witnesses residing out of State and in the State of Utah, at Salt Lake City, Utah; Utah County, Provo, Utah; and Carbon County, at Price, Utah.

5. In enjoining plaintiff-appellant from enforcing his rights to the entries of the defaults against eight (8) of the parties defendants.

6. In refusing to consider and give full force and effect to the Federal Rules of Civil Procedure for the District Courts of the United States as adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, Ch. 651, particularly Rule 4 (d) (3).

7. In refusing to exercise and enforce or apply and construe the law found in Title 28, U. S. C. A. Sections:

(a) 729; (b) 725; (c) 103; (d) 371 (Judicial Code Section 256, amended); (e) 377 (Judicial Code, Sec. 262, amended); (f) 687; (g) 688; (h) 695; (i) Last sentence of subd. (l) of Section 41, of Title 28; also subdivisions: (2); (12); (14); (17); (23)). 28 U. S. C. A.;

In Title 15 U. S. C. A., Sections 1; 2; 4; 5; 15; 22; and 24. 15 U. S. C. A.;

In Title 8 U. S. C. A., Sections 41, 43, 47. 15 U. S. C. A.;

In Title 18 U. S. C. A., Sections 52; 54; 88; 231; 232; 237; 238; 242; 243; 244; 245; 550; and 571. 18 U. S. C. A.;

In refusing to exercise and enforce, or apply and construe: Article 1, Section 9; Article IV; Article (V); Article VIII; and Article XIV of the United States Constitution.

8. In sustaining the plea of res adjudicata of the conspirators Nicholas J. Pappas, Helen N. Pappas, William V. Rosenkrans, and Harry Sussman.

9. In permitting the conspirator William V. Rosenkrans to openly continue and operate before it the conspiracy set forth in the Declaration or Complaint.

10. In permitting William V. Rosenkrans and Addison P. Rosenkrans to continue and operate the conspiracy before it by sustaining their plea of res adjudicata even as

against the conspirator Harry Sussman who is and has been hiding to cover his co-conspirators, and by the United States Marshal certified "out of District", and as that he could not be and was not found within the district, and who has never been served with summons and copy of the complaint.

11. In exonerating the conspirator Harry Sussman notwithstanding the fact he could not be found within the district of New Jersey and who have had no standing in its said Court.

12. In exonerating the defendant H. Collin Minton, Jr., notwithstanding the fact that he openly appears for and in behalf of all the other conspirators and prosecutes the conspiracy set forth in the complaint with a thorough understanding of its criminality and objective.

13. In exonerating the conspirator Carol C. Johnson notwithstanding the fact that he filed his motion and never has had the nerve or face to appear before the Court and face the plaintiff-appellant.

14. In refusing to recognize the nature of the action which the plaintiff-appellant alleges under the Constitution and laws of the United States and treaties made under its authority; which Articles of the United States Constitution and Laws of the United States are clearly printed in paragraph (b) on page three (3) of the Complaint and all subsequent pleadings filed by the plaintiff-appellant. (3rd Par. on Ruling on Motion No. 1.)

15. In refusing to recognize the fact that jurisdiction also rests on the fact that the plaintiff-appellant is a

subject of a foreign country and the defendants in question are citizens of the United States, and of the State of New Jersey as to the defendants Nicholas J. Pappas, Helen N. Pappas, and William V. Rosenkrans; and of the State of New York as to the defendant Carol C. Johnson. These facts also appear on paragraph (a) in the caption on page 3 of the Complaint.

16. In refusing to recognize and consider, apply and construe the Third, Fourth, Fifth, and Sixth Counts of the Complaint and intentionally excluded them from his or its findings of fact and conclusions as set forth under its rulings on Motion No. 4.

17. In refusing to consider, or apply and construe the Sixth and Conspiracy Count clearly printed on pages 13 and 14 of the Printed Complaint; and have had left the same undetermined, unconsidered, and out of his said findings of fact and conclusions of law.

18. In refusing to consider plaintiff-appellant's affidavit and Exhibits by him submitted on his Motion No. 5; which Affidavit and Exhibits were properly submitted in open court on a regular Motion day and after Notice to the attorneys of Record and appearance by H. Collin Minton, Jr.

The plaintiff-appellant deems the entire record as filed by him in the Court of Appeals in the First Appeal had; and the Supplement Photostated and Typed Record as filed in the Court of Appeals in the case of Nicholas J. Curtis, Petitioner, vs. Hon. Thomas Glynn Walker, and Hon. William F. Smith, Respondents. Case No. 7929. Petition for Writ of Mandamus, Brief thereto, and Appendix thereof, to be necessary for the consideration of the contentions above enumerated.

XXIX. CONCLUSIONS.

1. The Order of the Court below Ordering, adjudging and decreeing that the service of summons on Carol C. Johnson is quashed should be reversed, set aside, and made null and void. (See it on pp. 23a-24a App.)

2. The Order issued, signed and entered on motion No. 1 on the twenty-eighth day of November, 1941, Ordering, adjudging and Decreeing that it does not have jurisdiction as to the defendants Nicholas J. Pappas, Helen N. Pappas, Harry Sussman, and William V. Rosenkrans, and directing that their motion to strike the complaint and quash the service of summons is granted as to each of them;

And further ordering, adjudging, and Decreeing that the plaintiff is attempting to try in said Court as to the said defendants a matter already adjudicated by a state court;

And further ordering that the Complaint be, and thereby is stricken and the service of summons be, and thereby is quashed as to said defendants, should be reversed, set aside, and made null and void.

3. That the ruling on motion No. 4, in so far granting the motion of the Utah Fuel Company, H. Collin Minton, Jr., et als., on the grounds (par's 8, and 9 of motion) that the twenty-third and twenty-fourth contain scandalous charges that the defendant-company conspired with H. Collin Minton, Jr., to maliciously renew and reopen the alleged persecution of the plaintiff, although as it appears from the allegations of the complaint, he, H. Collin Minton, Jr., appeared in behalf of the defendant-company in answer to a Complaint filed by this plaintiff; and that the twenty-fourth count also contains unrelated and scandalous allegations concerning the Courts and Officials of the United States, be reversed, set aside, and made null and void.

4. That the ruling on Motion No. 2 granting the motion of and quashing the service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles R. Maybe, and William D. Sutton, should be reversed, set aside and made null and void.

5. The applications for the entries of the Defaults against the eight defendants in default should be granted and their defaults be entered according to law and federal rules of civil procedure.

6. The motion to substitute the Bamberger Coal Company and the default entered thereon should be granted and the default entered according to law.

7. The motion for leave to file second Supplemental Complaint should be granted and the 2nd supplemental complaint ordered filed.

8. The three motions to take Depositions of parties and witnesses residing in the State of Utah should be ordered granted.

The motion to take Deposition and examine witnesses residing in Greece should be granted, if conditions permit the procedure to take effect.

9. The motion for leave to submit the exhibits submitted to the Court below some of which are photostated and constitute the Record of the case in this Court should be granted;

Or,—in the alternative, provisions should be made and orders entered providing, ordering and directing that the service of summonses and complaint thus made upon the non-resident defendants be voided, and new and other and further services of summonses should be made according to the provisions of such and such orders; And

10. The general Order set out on pp. 27a to 34a of the Appendix has been submitted and up to the time the Brief has been turned over to the printers it was not signed; and if it be or be not signed and entered it should be set aside, reversed, and made null and void. And

11. This Court may grant such other and further relief in the cause as it may deem to be authorized by the circumstances, facts and laws, and the pleadings and exhibits making up the Record of the cause or case before this Court; and as it may deem just and proper.

Respectfully submitted,

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CAROL C. JOHNSON *cannot be found and his associates refused to accept service of papers sent to them.*